(23,739)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 590.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, AND SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY, APPELLANTS,

vs.

THE UNITED STATES, THE INTERSTATE COMMERCE COMMISSION, AND ARLINGTON HEIGHTS FRUIT EXCHANGE.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

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United States Commerce Court.

No. 41.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, Southern Pacific Company, and San Pedro, Los Angeles and Salt Lake Railroad Company, Petitioners,

VS.

THE UNITED STATES OF AMERICA, Respondent; INTERSTATE Commerce Commission and Arlington Heights Fruit Exchange et al., Interveners.

UNITED STATES OF AMERICA, *ss:*

Be it remembered that in the United States Commerce Court, in the City of Washington, District of Columbia, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

1 In the United States Commerce Court.

No. 41.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Southern Pacific Company, and San Pedro, Los Angeles and Salt Lake Railroad Company, Petitioners,

VS.

THE UNITED STATES OF AMERICA, Respondent; INTERSTATE Commerce Commission and Arlington Heights Fruit Exchange et al., Interveners.

Precooling and Preicing Citrus Fruits.

Amended and Supplemental Petition.

(Filed June 4, 1912.)

Come now The Atchison, Topeka and Santa Fe Railway Company, a corporation organized under the laws of the State of Kansas, the Southern Pacific Company, a corporation organized under the laws of the State of Kentucky, and the San Pedro, Los Angeles and Salt Lake Railroad Company, a corporation organized under the laws of the State of Utah, on behalf of themselves and all the other common carriers parties to the order of the Interstate Commerce Commission hereinafter set forth, and who are too numerous to be made parties hereto, and by leave of court first had filed this
2 their amended and supplemental petition, and respectfully state and show:

The Atchison, Topeka and Santa Fe Railway Company is operating and has been engaged in operating a line of railroad and branches thereto extending from points in southern California to the City of Chicago, forming connections at various points with lines of other railroads directly and indirectly so as to form through lines of transportation to practically all points east of the Rocky Mountains.

The Southern Pacific Company is operating and has been for a number of years last past engaged in operating a line of railroad extending from points in southern California to El Paso, Texas, and another line extending from southern California by way of San Francisco to Ogden, Utah, and at its terminii, as well as at other points, connects with various lines of railroad directly and indirectly, forming through lines of transportation to various points in the United States, particularly east of the Rocky Mountains.

The San Pedro, Los Angeles and Salt Lake Railroad Company is operating and has for some years last past been engaged in operating a line of railroad extending from certain points in southern California to Salt Lake City, Utah, connecting at various points on its line with lines of other railway companies directly and indirectly, forming through lines of transportation to various points in the United States, particularly east of the Rocky Mountains.

Said petitioners, as well as the other carriers parties to the order of the Interstate Commerce Commission hereinafter referred
3 to, are and have been engaged in transporting from points in southern California to various points in the United States oranges in carload lots under refrigeration as well as merely under ventilation; that at certain times of the year refrigeration is necessary to protect such shipments in transportation against the effects of the weather; that it is the duty of said carriers where necessary to properly protect such shipments and render their cars fit for transportation by supplying and placing in the bunkers in each car an adequate amount of ice and to renew the same from time to time as may be required to keep such car properly refrigerated; that in order to adequately perform their duties in that respect said carriers, and particularly the initial carriers, have been obliged to establish at various points along their lines of railway, and particularly at initial points of transportation, plants for the manufacture of ice or to secure an adequate supply thereof at various points by contract or otherwise so as to have sufficient ice on hand at various points as may be necessary to meet the requirements in respect to the proper refrigeration of cars of perishable freight, particularly oranges.

The refrigeration of cars is incidental to the proper and careful transportation of oranges at certain seasons, and it is the duty of the carriers to furnish adequate refrigeration where necessary or required and to supply their cars with necessary icing for the same, and said carriers have been and will be held liable in damages should they fail or neglect to supply the necessary icing or afford necessary refrigeration whenever required or deemed necessary in the transportation of said commodity.

Said carriers have heretofore generally supplied all icing
4 necessary for such refrigeration and have made and provided a separate charge therefor duly stated in their regular tariffs posted as required by law and filed with the Interstate Commerce Commission.

On or about the 5th day of July, 1909, said carriers, and particularly the initial carriers, through their agencies (certain refrigerator car line companies) amended their refrigeration rules so as to provide as follows:

"An all carloads of Citrus Fruit pre-cooled and pre-iced, or pre-iced by shipper, offered for shipment with instructions, 'Do not re-ice enroute,' a charge of $30 per car of 32,000 lbs. or less will be made, excess weight to be charged for at 9.375 cents per 100 lbs. On all cars handled under this rule, shipper will sign the following release, which must in all cases appear on shipping ticket and bill of lading and be copied on way-bill by agent;

'The giving and acceptance of these special instructions from the shipper releases the initial carrier and its connections from all liability for damage caused by non-icing in transit or at destination.' In event any such car is re-iced in transit, the above charge of $30 will be cancelled and the regular refrigeration rate applicable from San Bernardino or Los Angeles, Cal., to final destination, as shown in this tariff, will apply and must be added to the way-bill for collection in the usual manner."

Under such rule certain shippers of citrus fruit alone, particularly oranges, were permitted by the carriers to pre-ice cars of the carriers in which oranges might be loaded for transportation and prior to the transportation thereof by filling the bunkers or receptacles in said cars fitted for such purpose with ice for the refrigeration of such cars. About 7 per cent. of the orange traffic that moved under refrigeration from southern California was
5 under such permission pre-iced by the shippers thereof, but the great bulk of orange shipments moving under refrigeration continued to be wholly iced and refrigerated by the carriers. Such permission was wholly granted or yielded by the carriers to such shippers of citrus fruit as a matter of experiment and grace. Under such permission certain shippers through their employés were permitted to go upon the cars of the carriers and fill the bunkers thereof with their own ice so as to fit or prepare said cars for the proper transportation of oranges loaded therein. Such practice resulted in more or less damage to the equipment, that is, the refrigerator cars furnished by the initial carriers, and to greater damage than where the icing was wholly done by the agents and employés of the carriers themselves.

On or about the 15th day of December, 1909, a complaint was filed before the Interstate Commerce Commission by the Arlington Heights Fruit Exchange and certain other associations representing certain shippers of citrus fruit against the different railroad companies of the country, including said initial lines, which complaint was numbered 3000, before said Commission, and in which complaint was made that the aforesaid charge of $30 per car for re-

frigeration where citrus fruit was pre-cooled and pre-iced by the shipper, was excessive and unreasonable. Issue was taken upon such complaint by the carriers and evidence taken by the Commission and the matters were argued and submitted.

On or about January 14, 1911, said Commission made and filed their report and order in respect to said matter, a copy of which report and order as amended is hereto attached and marked "Exhibit A" and "Exhibit B."

6 In their said report said Commission determined the aforesaid charge of $30 per car to be unjust and unreasonable and fixed and prescribed a charge of $7.50 per car upon oranges pre-cooled and pre-iced by the shipper transported in carloads from shipping and producing points in southern California to points in other states of the United States named in Trans-Continental Freight Bureau Tariffs No. 3-I (I. C. C. No. 926) effective October 10, 1910, and No. 7-C (I. C. C. No. 921) effective April 18, 1910, which embraces practically all points in the United States east of the Rocky Mountains. The effective date of said order of said Commission was subsequently extended until May 15, 1911.

In their said report, notwithstanding the same was not put in issue before said Commission, said Commission erroneously held, as a matter of law, that shippers of oranges from southern California had the lawful and legal right to pre-ice the cars of the carriers used in transporting such oranges to said points in the United States.

The aforesaid order of said Commission, effective May 15, 1911, was and is unjust, unreasonable and unlawful in the following, among other, respects:

The aforesaid charge of $7.50 per car fixed by said Commission does not afford just or reasonable compensation to the carriers for the services rendered even where the car is pre-cooled and pre-iced by the shipper. Nor does it afford adequate or just compensation even upon the basis set forth in the report of said Commission. Said charge fixed by said Commission is not sufficient to pay for the cost of the extra service of hauling the ice required, and

7 allows the carriers no profit in performing the same, and which service is rendered in addition to that required in merely hauling such fruit under ventilation; but under the findings of the Commission itself as to the cost of carrying ice the amount allowed the carriers pays less than the cost of the services performed, by reason of all of which the order deprives the petitioners of their property without just compensation and without due process of law.

In their said report and in fixing the aforesaid charge of $7.50 per car said Commission erroneously failed to consider the expense the carriers are put to in having on hand at all times a sufficient supply of ice at various points to meet the necessities of refrigeration. Said Commission also failed to consider, in coming to its determination, that, notwithstanding the instruction of shippers, not to re-ice, yet it will frequently occur that on account of delays in transportation not due to the fault or negligence of the carriers, re-icing will become necessary and the carriers would be liable in damages if on such occasion they did not re-ice and properly refrigerate such car in

transit and before its delivery. The aforesaid charge of $7.50 per car is an arbitrary sum fixed by the Commissioner irrespective of the distances ice used in such refrigeration would have to be hauled and irrespective of the necessities which would arise when re-icing might become necessary; and in fixing said charge of $7.50 said Commission did not act within the scope of their authority in fixing a charge for such service to prevent extortion of unreasonable charges in that respect on the part of the carriers, but arbitrarily fixed said sum regardless of the character and value of the services which might be rendered by the carriers in that behalf, in doing
8 which said Commission sought to substitute their judgment and discretion for that of the managers of the railway properties.

Petitioners, deeming the aforesaid order unjust, unreasonable, invalid and unauthorized, filed, on the 4th day of May, 1911, their original petition in this court, wherein they prayed for an injunction and restraining order staying the operation and effect of the aforesaid order and asking that the same be set aside as invalid. But upon an application for temporary injunction this court, being of opinion that the aforesaid order did not require the carriers to permit the pre-icing of their said cars by the shippers, denied a motion for a temporary injunction upon the 29th day of May, 1911.

Thereupon your petitioners, as required by the order of said Commission, but under protest, filed an amendment to their said tariffs wherein the charge of $30.00 per car on account of refrigeration of cars pre-cooled and pre-iced by shippers was reduced to $7.50 per car.

The privilege accorded shippers of citrus fruit of pre-icing the cars of the carriers had been abused by said shippers in that block ice instead of broken ice was placed in the bunkers and that 3600 pounds more ice was placed in the bunkers than the carriers found necessary for refrigeration, and such excess weight was made in addition to the dead weight haul, and said privilege resulted in discriminations against shippers not having facilities for pre-icing and who, therefore, relied upon the carriers to furnish refrigeration; that there was a demand by shippers in general that the carriers perform their legal obligations and provide refrigeration and ice to all alike; that the privilege aforesaid of pre-icing the cars of the carriers
9 was availed of only by a certain class of shippers who had cold storage plants and then only availed of by them at such times as it suited their own convenience. At other times when it did not suit their convenience to pre-ice the cars they would require the carriers to pre-ice them and thus the carriers were required to have and maintain adequate facilities in southern California for the manufacture and furnishing of all ice necessary for refrigeration of cars engaged in the transportation of citrus fruit from such territory. The carriers therefore deemed it advisable to withdraw the permission theretofore granted to shippers of citrus fruit of pre-icing the cars of said carriers.

Thereafter your petitioner, The Atchison, Topeka and Santa Fe Railway Company, filed with the Interstate Commerce Commission

an amendment to its tariffs, known as Supplement No. 4 to "Santa Fe System" Tariff No. 8123-D, I. C. C. No. 5288, amending the rules relating to the refrigeration of citrus fruits, which said rule, as amended, is lettered A of Item No. 890, cancelling Item 77 of tariff, and is in words and figures as follows, to-wit:

"(A) The privilege heretofore permitted to shippers of citrus fruit to pre-ice carload shipments is withdrawn, the carriers retaining and exercising the exclusive right and control of furnishing and doing all icing and refrigeration of citrus fruit in all cases where shipper does not specifically request or direct shipments to move solely under ventilation."

Said amendment was published to become effective July 1, 1911.

At the same time your petitioner, the Southern Pacific Company, filed with the Interstate Commerce Commission an amendment, known as Supplement No. 3 to Southern Pacific Local and Joint Refrigeration Tariff No. 359-C, I. C. C. No. 3318, amending the
10 rules relating to the refrigeration of citrus fruits, which said rule, as amended, is in words and figures as follows, to-wit:

"Effective on and after July 1, 1911, the first paragraph of Item 134 under Section 2 'Rules' on page 32 of Tariff will be cancelled and eliminated and the privilege heretofore permitted to shippers of citrus fruits to pre-ice carload shipments will be withdrawn, the carriers retaining the exclusive right and control of furnishing and doing all icing and refrigeration of citrus fruits in all cases where shipper does not specifically request or direct shipment to move solely under ventilation."

Your petitioner, the San Pedro, Los Angeles & Salt Lake Railroad Company, also filed with the Interstate Commerce Commission an amendment known as Supplement No. 7 to Tariff No. 217-B, I. C. C. No. 325, amending the rules relating to the refrigeration of citrus fruits, which said rule, as amended, is in words and figures as follows, to-wit:

"Effective on and after July 29, 1911, the privilege heretofore permitted to shippers of citrus fruit to pre-ice carload shipments will be withdrawn, the carriers retaining and exercising the exclusive right and control of furnishing and doing all icing and refrigeration of citrus fruits in all cases where shipper does not specifically request or direct shipment to move solely under ventilation."

By the aforesaid amendments said carriers proposed and intended to withdraw the privilege or permission which had been theretofore extended to shippers of citrus fruit of pre-icing the cars of the carriers so as to refrigerate the same and thereby render them suitable for the transportation of such citrus fruit under refrigeration. But before said amendments became effective said Interstate Commerce Commission entered certain orders suspending the operation
11 and effect of said amendments to said tariffs, and subsequently, without entering upon a hearing of the matters involved in said amendments, or the legality thereof, arbitrarily and without lawful right or authority, entered subsequent orders further suspending the operation of said amendments to said tariffs until the latter part of April, 1912, and in the case of The Atchison, To-

peka and Santa Fe Railway Company, until the 1st day of June, 1912. A copy of each of the various orders suspending the operation and effect of the aforesaid amendments, withdrawing the privilege which had been theretofore accorded to shippers, is hereto attached, marked Exhibits "C," "D," "E," "F," "G," "H," "I," "J" and "K."

Thereafter said Interstate Commerce Commission set down said suspension orders for hearing on March 20, 1912, but on such hearing no additional evidence was offered in respect to the justness, validity or reasonableness of the aforesaid amendments, or in any other respects, but the matters involved were heard solely upon the evidence which had been taken by the Commission prior to the making of their aforesaid order of January 14, 1911, a copy of which is attached hereto, marked Exhibit "B."

Thereafter on April 8, 1912, the said Interstate Commerce Commission made and filed their decision and report in regard to the aforesaid amendments to the aforesaid tariffs and wherein the said Commission held the aforesaid amendments withdrawing the right and privilege which had been theretofore granted shippers of pre-icing cars to be illegal and invalid, a copy of which said report and decision of said Commission is hereto attached, marked Exhibit "L."

12 Upon the same day, to-wit: April 8, 1912, the said Commission made an order upon their said report wherein, among other things, said amendments to said tariffs were indefinitely suspended and the carriers were required on or before the 20th day of May, 1912, to cancel the tariffs which had been filed as amendments aforesaid, and said carriers were ordered and required to continue in effect and maintain in force for a period of two years from the date thereof, a charge for pre-cooling oranges transported in carloads from shipping and producing points in southern California to points in other States of the United States which should not exceed $7.50 per car. A copy of said order of April 8, 1912, is hereto attached, marked "Exhibit M."

Said Commission had no lawful right or authority to either temporarily or indefinitely suspend the operation of the aforesaid amendments to said tariffs withdrawing from shippers of citrus fruit the privilege theretofore accorded of pre-icing cars, nor had said Commission any lawful right or authority to require the cancellation of said amendments to said tariffs.

Said order of April 8, 1912, is erroneous, unjust, unreasonable, arbitrary and unlawful in the following respects among others:

Said order is wholly unsupported by and contrary to the evidence as well as to the very findings of the Commission.

Said order is wholly beyond the scope of the inquiry had by the Commission setting down for hearing its aforesaid suspension orders.

Said order is based upon a mistake and misconception of the facts.

13 Said order is based upon a mistake and misconception of the law in that it seems to be based upon the erroneous conclusion of the Commission that shippers of citrus fruit have the law-

ful right to pre-cool and especially to pre-ice the refrigerator cars of the carriers thereby furnishing icing and refrigeration incidental to the haulage or transportation of such fruit.

Said order will require the carriers to give to said shippers, without adequate or just compensation therefor, the use of costly refrigerator cars permitting such shippers to adapt and use such cars as cold storage plants for their fruit while in transit, thus permitting shippers to seize and use the costly transportation facilities belonging to the carriers for refrigeration purposes while their goods are in course of transit.

In so far as the aforesaid order seems to fix a maximum charge of $7.50 for pre-cooling oranges transported in carloads the same is vague, indefinite and unintelligible and not responsive to the inquiry upon which the report of the Commission was made or upon which the aforesaid order was based; that the aforesaid amendments to the tariffs of said carriers did not purport or pretend to fix any charge for pre-cooling oranges but simply sought to retain for the carriers the exclusive right of icing, cooling or refrigerating their own equipment for the purposes of the transportation and where such refrigeration was deemed necessary by reason of the shipper not specifically instructing the carriers to transport such fruit solely under ventilation.

The aforesaid charge of $7.50 per car which had been fixed by the Commission in its previous order was fixed solely as com-
14 pensation to the carriers for services rendered in connection with transportation in respect to shipments of citrus fruit in cars pre-cooled and pre-iced by the shippers themselves and such charge was not a charge fixed for pre-cooling oranges transported.

Said Commission, in its said report, confounded and confused the right of owners of citrus fruit to pre-cool the same in cold storage warehouses prior to shipment with the legal right, duty and obligation resting upon the carriers to furnish refrigeration whenever necessary by icing and refrigerating or cooling their own cars so as to adapt the same for the proper and safe handling of fruit in transit.

The aforesaid charge of $7.50, fixed by the Commission as a maximum as compensation for the services of the carriers in the handling of a carload of citrus fruit from southern California to destination which may be pre-cooled or pre-iced by the shippers, was and is unremunerative and unjust to the carriers and does not even give them the cost incurred in performing such service, according to the findings set forth in the former report of said Commission, and the fixing of such charge for such service below the cost thereof and the depriving of your petitioners of any reasonable profit for the performance of such service, deprives your petitioners of just compensation for the use of their property and deprives them of their property without due process of law.

The aforesaid charge of $7.50 fixed by said Commission in its prior order, heretofore set forth and required by the said order of April 8, 1912, to be continued in effect, is unreasonable, unjust and unremunerative for the grounds and upon the reasons heretofore set

forth in respect to the aforesaid prior order of said Commission effective January 14, 1911.

Your petitioners state that they are and have been fully prepared to furnish all necessary icing and to refrigerate or cool their said cars so as to fit the same for transportation of citrus fruit under refrigeration, and that it would be unjust and unlawful to force said carriers to grant to certain shippers of citrus fruit the privilege of furnishing such icing and refrigeration merely when it suited their convenience or pleasure to do so. Such unlawful requirement would unduly hamper the carriers in the performance of their duties and disorganize and seriously interfere with their calculations and the making of necessary provisions in preparing themselves to fully discharge their aforesaid duties.

If the said order of April 8, 1912, is permitted to continue effective it will result in great and irreparable damage to your petitioners and each of them in that it will compel your petitioners to maintain at the initial points in said southern California their icing and refrigeration plants so as to be prepared to refrigerate all shipments of citrus fruit offered for transportation and which may require refrigeration and will deprive your petitioners of the right to furnish such refrigeration at all times when the same may be required, and thereby will deprive your petitioners and each of them of the profits which they are entitled to make and receive from the performance of the aforesaid service of refrigeration.

Said order will also compel your petitioners to accept shipments of citrus fruit which may not be properly refrigerated by the shippers and owing to the difficulty, if not impossibility, of securing requisite evidence or proof to determine whether such damage has been the result of insufficient icing of said shipments by shippers or is the result of other causes, will subject your petitioners to the payment of claims for damages to consignees or others interested in such shipments, and will prevent your petitioners and each of them from protecting themselves against excessive claims for damages which may be caused by insufficient refrigeration over which they have no control.

In so far as said order requires your petitioners to permit shippers of citrus fruit to place their own ice by their own agents in the bunkers of refrigerator cars and to go upon said cars for such purposes at or before the time such cars may be loaded with citrus fruit, it will require your petitioners to surrender such cars to the use of such shippers and their agents and subject your petitioners to the risk of great damage to such cars by reason of the careless method in which the ice may be put into such cars or in which its cars may be so used by the employés of said shippers, and your petitioners will have no control over such employés, or any supervision over them in their work, without incurring great expense therein, and your petitioners will be subjected to endless controversies and litigation in case any damage may be done to their cars by the employés of said shippers, whereas your petitioners should, as a matter of right, have subject to their own control and supervision the preparation and use of their cars for purposes of transportation.

Your petitioners aver that there will be a large number of shipments of oranges and other citrus fruits from southern California after the effective date of said order of April 8, 1912, which they are prepared to refrigerate at their refrigeration plants and stations, which will insure the safe transportation of said shipments without damage, and that if said order continues effective your petitioners will be deprived of the use of their plants and icing stations with which they have provided themselves for the express purpose of refrigerating such shipments and will be obliged to maintain said refrigerating plants and stations to their present capacity in order to provide for all shipments of citrus fruits which may be delivered to them in the event the shippers of citrus fruits elect to call upon your petitioners to perform this service.

17

In their said reports and orders of January 14, 1911, and April 8, 1912, fixing the aforesaid charge of $7.50 per car, said Commission erroneously failed to consider the expense the carriers must necessarily incur in keeping on hand at all times a sufficient supply of ice at various points to meet the necessities of refrigeration.

Said Commission also failed to consider, in reaching its conclusion, that, notwithstanding the instructions of shippers not to re-ice, yet it will frequently occur that on account of delays in transportation not due to the fault or negligence of the carriers, re-icing will become necessary and the carriers will be liable in damages if on such occasions they do not re-ice and properly refrigerate such shipments.

The aforesaid charge of $7.50 per car is an arbitrary sum fixed by the Commission irrespective of the distances ice used in such refrigeration is hauled and irrespective of the necessity of re-icing; and in fixing said charge of $7.50 said Commission did not act within the scope of its authority to fix a maximum reasonable charge for the service rendered by the carriers to prevent extortion, but on the contrary arbitrarily fixed said sum regardless of the character and value of the services which would be rendered by the carriers in that behalf.

Your petitioners further aver that there will be a large number of shipments of oranges from southern California after the effective date of the order of April 8, 1912, and if the carriers are required to observe such order and make said charge of $7.50 effective, they will be deprived of a large amount of earnings to which they are justly entitled and which they will be wholly unable to hereafter collect, and will thus be subjected to great losses which they will be unable to hereafter recover, by reason whereof they will suffer great and irreparable loss and damage.

18

Wherefore, your petitioners pray that the aforesaid order of January 14, 1911, and the aforesaid order of April 8, 1912, each of them, and every part thereof, be set aside, annulled, and held for naught, as unreasonable, unjust, and invalid, and that the enforcement, operation and effect of said orders, and each of them, and every part thereof, be duly enjoined by the decree of this court; and that in the meantime, upon application, a temporary injunction be granted suspending and staying the enforcement, operation and effect of

said orders, and each of them, and every part thereof, until the final hearing of this cause when a permanent injunction may be granted permanently enjoining the enforcement of the aforesaid orders; and for such other and further relief as may be meet and proper.

ROBERT DUNLAP,
T. J. NORTON,
H. A. SCANDRETT,
C. W. DURBROW,
A. S. HALSTED,
Solicitors for Petitioners.

19 STATE OF ILLINOIS,
County of Cook, ss:

F. B. Houghton, being duly sworn according to law, deposes and says that he is the Freight Traffic Manager of The Atchison, Topeka & Santa Fe Railway Company, one of the petitioners in the above entitled cause; that he knows the facts stated in the above and foregoing amended and supplemental petition and that the statements therein are true.

F. B. HOUGHTON.

Subscribed and sworn to before me this 1st day of June, A. D. 1912.

[NOTARIAL SEAL.] CHARLES V. HUBBELL,
Notary Public.

My Commission expires April 22, 1916.

20 EXHIBIT A.

No. 3000.

ARLINGTON HEIGHTS FRUIT EXCHANGE et al.
v.
SOUTHERN PACIFIC COMPANY et al.

Submitted December 9, 1910. Decided January 14, 1911.

1. In determining what is a reasonable charge for furnishing refrigeration for the movement of citrus fruits from California to eastern markets, nothing should be added by reason of the fact that a refrigerator car is used, since that has been taken into account in establishing the rate of transportation, nor for the service of inspection, which is substantially the same for all shipments; but the expense of transporting the additional weight of the ice and for repairs to the ice bunkers should be considered.
2. Defendants' present charges for the refrigeration of oranges in transit from California points to the east found not unreasonable.

3. Refrigeration and precooling are entirely different, and precooling as practiced by the shippers differs from that furnished by the carriers. The two methods are discussed, and the conclusion reached that while it can not be affirmed with entire confidence that precooling can take the place of standard refrigeration, under all circumstances, it is evident that the great bulk of the orange crop may be moved by precooling as applied by the shippers.
4. Upon the facts disclosed by the record, it must be found that precooling at the packing house is a practical method which the complainants are anxious to use and for the efficiency of which they are willing to stand responsible, while the
21 method advocated by the carriers is of doubtful practicability and one which the complainants do not dare to use and which the defendants are unwilling to guarantee.
5. In view of the circumstances under which these oranges are transported, it is the duty of the carrier to furnish refrigeration upon reasonable demand, and in so far as the furnishing of that refrigeration is a part of the service rendered by the carrier, the carrier may insist upon its right to furnish that service exclusively; but it appears that the service of precooling, as these shippers desire to use it, can only be performed by the shippers themselves, and the Commission thinks that upon the present record it is the right of these complainants to precool and preice their shipments. If, however, the carrier has been put to additional expense in the furnishing of the car or in the handling of the shipment, it should be allowed proper compensation upon that account.
6. Carriers are not in case of these precooled shipments entitled to additional compensation by reason of the fact that a refrigerator car is furnished, but they are entitled for repairs to ice bunkers to an additional charge per car per trip one way.
7. Defendants' present precooling charges for oranges in transit from California points to the east found unreasonable and reasonable charges established for the future.

Mayer, Meyer, Austrian & Platt; F. E. Matthews; A. F. Call, and J. H. Call, for complainants.

Robert Dunlap, E. W. Camp, T. J. Norton, and Gardiner Lathrop for Santa Fe system companies.

F. C. Dillard, W. R. Kelly, P. F. Dunne, C. W. Durbrow, and W. F. Herrin for Southern Pacific Company, Union Pacific Railroad Company, and others.

Harry L. Titus for San Diego, Cuyamaca & Eastern Rail-
22 way Company and San Diego Southern Railway Company.

A. S. Halsted for San Pedro, Los Angeles & Salt Lake Railroad Company.

S. A. Lynde for Chicago & North Western Railway Company.

Report of the Commission.

PROUTY, *Commissioner:*

The complaint in this proceeding puts in issue both the charge for transportation and that for refrigeration. The Commission disposed of the transportation phase in an opinion promulgated June 11, 1910, reserving for consideration all questions as to refrigeration, and those are now before us for determination. 19 I. C. C. Rep., 148.

Two systems of refrigeration are involved, known as "standard refrigeration" and "precooling." These will be considered separately.

Standard Refrigeration.

Under this system the oranges are loaded into a refrigerator car before either the fruit or the car has been artificially cooled, the boxes being so packed as to allow a free circulation of air between and around them. After being loaded the car is taken to some gathering point, usually San Bernardino, upon the line of the Santa Fe and Colton, upon the line of the Southern Pacific, when the shipments originate in Southern California, and the bunkers are there filled with ice. As the car journeys east the bunkers are opened from time to time and replenished with additional ice.

This kind of refrigeration has been long in effect and is still the one generally used. The charges from California points in case of oranges and lemons are, per standard car, $80 to the Missouri River, $62.50 to Chicago and similar points, $72.50 to Buffalo and Pittsburgh, $75 to New York, and $77.50 to Boston. The complainants insist that these charges are excessive. Since no claim is made that they do not bear a proper relation to one another, that to Chicago may be considered.

The parties do not agree as to the basis upon which the reasonableness of these charges is to be determined. The complainants insist that the defendants are only entitled to the actual cost of the ice used in this service, and as evidence of this point to a letter from the president of the Santa Fe system stating that his company has never desired to make any profit over and above the cost of the ice, and to what are claimed to be similar statements upon the part of the Southern Pacific representatives. They also refer to the testimony before the Commission when attack was formerly made upon these refrigeration charges, Consolidated Forwarding Co. v. So. Pac. Co., 10 I. C. C. Rep., 590, 610, where these same charges were approved and where it appeared that the cost of the ice approximately equaled the amount of the charge.

The defendants contend that the charge for refrigeration should include in addition to the cost of the ice compensation for the use of the car, the extra cost in maintaining a car of this type, the hauling of the ice, and the inspection which the cars receive en route.

The fact that refrigeration is required and the circumstances under which it is called for and furnished render it necessary to use a re-

frigerator car as a practical matter for the transportation of these citrus fruits at all periods of the year. In determining the
24 freight rate this fact has been taken into account; that is, the rate applied on shipments under ventilation has been adjusted in view of the fact that a refrigerator car, more expensive than the ordinary box car, must, as a practical matter, be employed. Hence, in determining the additional sum which the shipper who has the benefit of refrigeration shall pay, nothing should be added by reason of the fact that a car of this type is used.

It appears that when the bunkers are filled with ice certain repairs to that portion of the car are necessary which are not ordinarily required, and that the expense of these repairs is perhaps $5 a trip, on the average. This is an item of cost which should be properly charged against the refrigeration service.

The bunkers of a Santa Fe car, as ordinarily filled in standard refrigeration, contain about 9,000 pounds. Those of the Southern Pacific cars are somewhat larger, containing about 10,000 pounds. The ice melts as the car moves on from icing station to icing station, so that the weight of the ice is not, on the average, as much as the full bunker. Probably a fair average weight would be from 7,000 to 8,000 pounds, being somewhat greater upon the Southern Pacific lines than upon those of the Santa Fe. The defendants claim that they should be allowed for the hauling of this additional weight which is not carried when the shipment moves under ventilation.

The complainants answer that this has been taken into account in determining the citrus-fruit rate and ought not to be again considered in fixing these refrigeration charges, and as evidence of this point once more to the declarations of the president of the Santa Fe system. There are also some expressions in the opinion of the Commission in this case which indicate that in approving the rate
25 of $1.15 consideration was given to the fact that a portion of the shipments moved under refrigeration and therefore involved the hauling of this additional load.

The complainants also urge that no allowance should be made for the hauling of the ice in fixing the refrigeration charge, because that service is rendered by the railroad company which transports the fruit, while the refrigeration service is rendered by an independent company in case of both the Santa Fe and the Southern Pacific. Since this refrigeration company performs no transportation service, it cannot properly be allowed anything for the handling of this ice.

While this argument is a fair one upon its face, it is, in reality, without merit. The railroad company is responsible for both the transportation and the refrigeration service. It may, if it deems best, furnish the refrigeration by contract with some independent agency, but it still stands responsible to the public. In the present instance the refrigeration company while independent in theory, is, in fact, the creature and property of the railroad upon which it operates. We think that the reasonableness of this refrigeration charge should be determined in the case before us exactly as though the service were rendered by the railroad company itself. If the

two companies were to be considered as independent and the charge fixed with reference to the refrigeration company alone, still it might be that the railroad company by its contract with the refrigeration company had agreed to haul the ice and allow that company to charge for it.

It is plain that in determining the additional charge, which the shipper who requires refrigeration should pay in addition to the amount exacted from the shipper who does not receive refrigeration, the cost of this additional haul should be charged against the refrigerated shipment. Otherwise, the grower who picks his oranges earlier in the season, when they can be sent through under ventilation, will be compelled to contribute to the expense of transporting the fruit of his neighbor who does not market his crop until later. We hold that the expense of transporting this additional weight should be considered in fixing the charges for refrigeration.

Exactly what the amount fairly allowable on this account should be it is impossible to determine. The defendants claim that they may properly apply to this load the orange rate $1.15 per 100 pounds, which, upon an estimated weight of 8,000 pounds of ice to the car, would produce an additional charge of $92, materially more than the entire charge for refrigeration to the most distant point. Clearly, the additional expense to the railroad company of hauling in the same car this extra weight of ice would be but a fraction of the amount above named. It is not probable that the actual additional cost to the carriers could exceed upon the average $20 per car.

The defendants further claim that they are entitled to charge something for inspection, but the service in case of refrigerated shipments is but little different from that given to the movement under ventilation, save for the work of examining and filling the ice bunkers, which may properly be included in the cost of the ice.

The largest item of expense, and that most considered, is the cost of the ice itself. Upon the original hearing there was a sharp difference of opinion as to the amount of ice required in the refrigeration of these shipments, and for the purpose of satisfying itself as to the fact the Commission conducted a series of experiments covering the last weeks of April, May, June and July, 1910.

These tests were carried on only upon the line of the Santa Fe up to and including Argentine, Kans., which is the icing station of that company at Kansas City. Shipments are not iced after leaving Argentine until they reach Corwith, the breaking-up yard of the Santa Fe, just outside of Chicago, where the car is always iced when the destination is beyond Chicago, and frequently, and perhaps usually, when for Chicago delivery.

Without giving the figures it is sufficient to say that the quantity of ice used for the weeks in question was approximately 10 tons, including the icing at Argentine, and that an additional ton would probably be required on the average in case of Chicago deliveries, making the total amount of ice required to refrigerate a car of citrus fruits from southern California to Chicago about 11 tons. The

quantity is somewhat greater in June, July, and August, but the number of cars refrigerated is very much less.

No observations were made by the Commission upon the lines of the Southern Pacific, but that company has introduced elaborate figures from which it appears that the quantity of ice used in the cars of that system is somewhat greater than upon the Santa Fe, probably from one to two tons per car.

It is impossible to determine with exactness the cost of this ice. It costs materially less to-day than when this matter was formerly under investigation by the Commission. At Los Angeles at the present time ice is supplied in the bunkers for $2.25 per ton. It can undoubtedly be put into the bunkers at the plants of the Southern Pacific and the Santa Fe at Colton and San Bernardino for the same sum, at a handsome profit, including interest on the investment and depreciation, provided the plants are run to anything like their capacity. At some other points the cost is much greater. On the whole an average from $2.50 to $3 per ton would be liberal to the carrier. The average cost to the Santa Fe of the ice required up to Chicago would not much exceed $30 per car.

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The cost of refrigeration to Chicago upon that line would therefore total as follows:

Cost of Ice	$30
Cost of repairs to bunkers	5
Hauling of ice	20
Total	$55

To this should be added a certain element of risk which the carrier must assume in the rendering of this service, and, as was held in Southern Ry. Co. v. St. Louis Hay & Grain Co., 214 U. S., 299, a fair profit upon the transaction.

It is evident, therefore, that stated upon this basis the present charges for refrigeration cannot be regarded as excessive. This result is confirmed by reference to refrigeration rates from Florida points to New York and Chicago, which have been approved by us, and are for half-tank service $50 per car, for full-tank service $75 per car. It must be remembered, however, that the ordinary movement from Florida is in box cars under ventilation and that when refrigeration is required a refrigerator car is specially furnished for that service—an important difference.

We fail to find that the charges for standard refrigeration are excessive.

Precooling.

The system of refrigeration known as precooling, which is essentially different from the standard refrigeration just considered, grew out of experiments conducted by the United States Department of Agriculture into the handling of oranges. Those researches demonstrated that decay in oranges was due mainly to mechanical injury in the handling and that if this could be

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voided refrigeration was not necessary to prevent decay, but only to preserve the appearance of the fruit. While the greatest care is now exercised in the handling of the orange from the tree to the car, abrasions of the skin cannot be entirely avoided, and the experiments above referred to further demonstrated that in case of such injury the result was minimized by cooling the fruit at the earliest possible moment and maintaining thereafter a low temperature. It was more difficult to arrest and control the process of decay when it had once fairly set in than it was to check it at its inception.

Precooling grew out of these investigations of Professor Powell and was tried by him in the course of his experiments. In actual practice it takes two forms, which may be termed precooling by the shipper and precooling by the railroad. These two methods are essentially different and must be understood in order to intelligently appreciate the question presented.

In precooling by the shipper the basic idea is to bring the fruit under the influence of a low temperature at the earliest possible moment. The oranges are brought from the tree to the packing house and packed in a box which is immediately deposited in a cold room. Here the process of extracting the heat from the orange at once begins and gradually continues until at the end of from twenty-four to forty-eight hours all parts of the fruit in all parts of the box have been reduced to a uniform temperature of from 33 degrees to 35 degrees Fahrenheit. The box remains in this cold room at this temperature until it is to be loaded. The car is then connected with the room by a collapsible passageway and the oranges are taken directly from the cold storage to the car, where they are placed, not with air spaces between, as in case of ordinary refrigeration or ventilation, but close together. The bunkers of the car are filled with large blocks of ice especially intended for that purpose, and the bunkers and vents are now sealed up so as to make the car as nearly air-tight as possible. All this is done by the packer at the packing house, and the car is now delivered to the railroad with instructions to transport to destination without reicing and without breaking the seals.

The cost of precooling and preicing a car in this manner, including interest on the investment and depreciation of the plant, is from $30 to $35, a fair average being, perhaps, $32.50.

Upon the first hearing the defendants denied that during the warm months it was practicable to ship oranges from southern California to eastern markets without icing in transit. The experiments of Professor Powell had indicated that this could be done, and the testimony upon the first hearing showed that during the season of 1908-9 numerous shipments had been actually made by this method with perfect success. It appeared, however, that these cars had frequently been opened and reiced in transit against the instructions of the shippers, and it did not seem to the Commission that the practicability of this system had been conclusively shown.

For the purpose of putting this to a demonstration as far as possible, we required a record to be kept during the season of 1909-10

which would show, in case of pre-cooled shipments, point of
31 origin, date of shipment, destination, date of arrival, amount of ice in bunkers at time of arrival, temperature of car at arrival, and condition of fruit. Such records have been kept, the report made up at destination being usually certified to by a representative of the California Fruit Growers Exchange and also of the refrigeration company or the railway.

These precooled shipments have moved from four points.

There was in partial operation during the season a small plant at Uplands of which no very accurate account appears in this record, and which may be disregarded.

At Los Angeles the oranges were shipped in from the packing house, placed in cold storage, and when reduced to a proper temperature loaded into the cars which were then iced and sealed. It will be observed that the application of the system at this point did not involve those features to which the complainants attach the greatest importance; that is, a considerable lehgth of time intervened between the packing of the oranges and the placing of the box in cold storage. These preiced cars from Los Angeles appear to have carried fairly well, but the privilege of stopping off for that purpose has been withdrawn by the defendants, is not insisted upon by the complainants, and the results from that point, therefore, may be omitted. It should perhaps be noted that they do not in any way discredit, but rather tend to confirm, the claim that precooling when conducted as the complainants say it should be is feasible.

There are in operation at East Highlands and Pomona two plants in which precooling is carried on in a manner approved by the complainants. These plants were in operation during the season of 1908-9, and the evidence tended to show that cars so treated
32 had carried to destination in good condition at all seasons of the year. The records above referred to show that for the season just passed 124 cars of precooled and preiced fruit were shipped from East Highlands, all of which reached destination in good order; that 207 were shipped from Pomona, of which 7 showed more than 3 per cent. decay. Shipments from East Highlands were mostly completed in the month of June, but those from Pomona extended through the month of July. It fairly appears that during all these months these precooled and preiced shipments carried as well as contemporaneous shipments moving under standard refrigeration. The complainants insisted that the fruit reached destination in better condition and commanded a better price than that refrigerated by the carriers.

It was said upon the second hearing that the carrying capacity of the fruit for the season of 1909-10 was above the average, from which the defendants argue that a weak fruit could not have been transported without reicing in transit, while the complainants insist that the advantage of their system would have been even more conspicuous, owing to the benefit of placing the fruit under early refrigeration.

While it cannot be affirmed with entire confidence that precooling can take the place of standard refrigeration under all circumstances,

It is evident that the great bulk of the orange crop may be moved by this method as applied by the shippers.

The method of precooling practiced by the carriers is entirely different from that already described. No attempt is made to cool the fruit until after it has been placed in the car; but the cars themselves, loaded exactly as they would be for transportation under ventilation or under standard refrigeration, are taken to the precooling station which, in case of the Santa Fe is at San Bernardino, and in case of the Southern Pacific at Colton.

The precooling itself is accomplished by forcing a blast of cold air through the car which contains the fruit. At the beginning of the process the air entering the car is considerably below freezing but as the fruit becomes cooler the temperature of the current is raised.

These plants, of which the Santa Fe is said to have cost $500,000 and the Southern Pacific $750,000, are both for the manufacture and storage of ice and the precooling of the fruit. They are modern in every respect. An entire trainload can be precooled at once, the time occupied being from two to four hours, according to the temperature and intensity of the blast.

The complainants deny the practicability of this system, and assert that the system as practiced by them is superior in the following particulars:

1. It is essential that the fruit be brought immediately under the influence of refrigeration, since, as already suggested, incipient decay can be dealt with much more effectively than after it has progressed for a period. They assert that it is of the utmost importance that the fruit should be placed at once in a cold temperature, which is secured under their system and not under the system of the defendants. They also insist that in the limited time allowed the fruit in the interior of the box cannot be brought to a uniform low temperature.

2. It is claimed that the cost blast which is first applied to the hot fruit is liable to damage the fruit itself. Even though the orange is not frozen, the cells of the skin are injured in the same way that they are by frost, with the result that while the fruit will not decay the skin loses its power of resistance and dries up, thus impairing the appearance of the fruit.

This was denied by the defendants, and there was no testimony as to actual results.

3. It will be remembered that as oranges are loaded for shipment under ventilation or standard refrigeration, the boxes are separated in the car so as to permit the free circulation of air. Under the system of the shippers, the boxes of cold fruit are placed close together in the car, and it was said that this was necessary since the solid mass of cold fruit was relied upon to maintain an even temperature in the car. By this method an additional tier of boxes can be loaded thereby increasing the paying load of the car one-sixth.

The defendants insisted that it was possible under their method to precool a solid carload of fruit and gave evidence showing that this had been done, but it seems reasonable that where a circulation

of air is relied upon for precooling the fruit must be so arranged that the cold air can come readily into contact with the fruit.

4. Under the system of precooling by the packer the oranges can be retained in the cold room until the car is placed for loading. Since at times there is great difficulty in obtaining cars exactly when ordered, it is frequently necessary to pile up a considerable quantity of oranges waiting loading. Under the system of the defendants these oranges are without refrigeration from the time they are packed until they reach the precooling station in the car, while under the the system of the packers they are in cold storage and can be held without danger. Precooling by the packers tends, therefore, to minimize the effect of car shortage.

35 The complainants believe that the system of precooling as practiced by the defendants is not equivalent to their own, and they have declined to take the hazard of that method. The defendants themselves express the opinion that oranges will not carry to destination without reicing, either under their own system or that of the complainants, and they have declined to assume the responsibility of that form of refrigeration as offered by them.

Upon this record, therefore, it must be found that precooling at the packing house is a practical method which the complainants are anxious to use and for the efficiency of which they are willing to stand responsible, while the method advocated by the carriers is of doubtful practicability and one which the complainants do not dare to use and which the defendants are unwilling to guarantee.

When precooling was first tried no additional charge was made by the carriers. After the precooling plants at East Highlands and Pomona had been erected a charge of $30 per car was established; that is, if the shipper precooled and preiced his car and the carrier then transported that car to its destination without icing in transit, the shipper was required to pay $30 per car, which the complainants contend is unreasonable. The defendants now state that this charge was established for experimental purposes; that they deny the legal right of the shipper to precool and preice his fruit and are satisfied that that privilege ought not to be accorded upon any terms. While they have allowed their tariffs to remain in effect pending this proceeding, they express the intention upon its determination of withdrawing the privilege entirely. Two questions are therefore presented for our determination.

36 1. Has the shipper the legal right to precool and preice his shipments in the manner indicated?

2. What, if any, charge may the carrier reasonably make when the car is so treated?

The position of the defendants seems to be this: In case of a considerable portion of the year transportation without artificial cooling is impossible, and refrigeration is therefore a part of the service of transportation. Both the courts and the Commission have decided that carriers must, under such circumstances, be prepared to furnish reasonable refrigeration upon reasonable request. Now, if it is the duty of these defendants to furnish this refrigeration service, then they may insist upon performing the entire service. The shipper

has no right to provide refrigeration himself today and call upon the railroad company for that service tomorrow. To permit such a course is to demoralize the service of the defendants and prevent them from discharging their duty with economy and efficiency.

The above propositions can not be controverted. In view of the circumstances under which these oranges are transported, it is the duty of the carrier to furnish refrigeration upon reasonable demand, and in so far as the furnishing of that refrigeration is a part of the service rendered by the carrier, the carrier may insist upon its right to furnish that service exclusively. Without referring to authorities or attempting to state reasons, we accept these fundamental propositions as correct. The question therefore is, Does the shipper in case of these precooled shipments demand of the carrier any refrigeration service? Does the carrier in the case of such shipments render any service in addition to the naked transportation?

57 These cars are prepared by the shipper and are delivered to the carrier with instructions to transport to destination without opening the bunkers or breaking the seals. The entire duty of the carrier is discharged when it places that car in its train and hauls it to its destination.

It is urged that the defendants can not stipulate against the consequences of their own negligence and that they ought not to be required to assume the responsibility unless they are allowed to discharge the service. But what responsibility is it that the carriers assume in connection with the transportation of one of these precooled cars? Clearly there is no responsibility in the matter of refrigeration. The carrier is simply required to haul that car to its destination. That duty it must perform and it must perform it within a reasonable time and in a reasonable manner.

Its obligation is exactly the same with respect to a precooled as to a ventilated car. No question is made but what the grower may instruct the carrier not to ice one of these cars, and that these instructions must be followed by the carrier. If such a car is left upon the desert or is not carried with reasonable expedition, so that the fruit injures, whereas had it been properly moved there would have been no injury, the carrier is responsible. In the same way it must handle a precooled car with due diligence, and if so handled there can be no liability for defective refrigeration.

The carrier should have the right to protect itself against the consequences of its negligence by opening the bunkers and filling them with ice in the same manner in case of a precooled as in case of a ventilated shipment, the expense being borne by the carrier.

58 It is difficult to concive of a condition in which the limitation of the carrier's responsibility could be more clearly defined than here. When it undertakes to supply standard refrigeration there may always be a question as to the condition of the fruit when it started and as to the sufficiency of the refrigeration itself, and the facts determining that liability may always be open to doubt; but with the precooled shipment the one element of fact is the time of the transit, as to which there can be no serious dispute.

The first section provides that the furnishing of the car is a part of the transportation, and it may be claimed here since the carrier

furnishes the car and since a refrigerator car is required that it thereby assumes a part of the refrigeration service.

It should be noted that while the same car is used for precooling and for standard refrigeration the two things are entirely separate. The mere fact that the carrier is required to furnish for this mode of shipment a refrigerator car does not entitle it to insist upon moving that shipment under standard refrigeration.

Oranges can not be moved in box cars without ventilation. Let us assume that the ventilated car had been unknown and that the entire citrus-fruit crop had moved at all seasons of the year under refrigeration. It is discovered that by the use of a car so constructed that a current of air can be forced through the oranges by the motion of the car, two-thirds of the citrus-fruit crop can be transported without the expense of refrigeration. Could the defendants under these circumstances insist that all oranges should continue to move under refrigeration and would they rest under no obligation to provide ventilated cars?

39 During the last season 40,000 carloads of citrus fruits moved from California to eastern markets, and during the present year that number will probably be increased to 50,000 cars. During many months nearly one-half of the entire eastern movement upon at least one of these transcontinental lines is made up of oranges and lemons. This vast tonnage should be handled in the most economical and satisfactory manner, and these carriers should furnish for that movement such cars as will effectuate that purpose. They have a right to insist upon a proper compensation for supplying that equipment, but they have no right to say that old methods must continue in use and new methods held in abeyance rather than change the form of their cars.

The carrier may insist upon furnishing all the equipment which is needed for the movement of precooled shipments and might decline to use equipment furnished by the shippers, but it can not refuse to furnish proper equipment upon fair terms; certainly not when, as in the present instance no change in its present equipment is required.

It was suggested upon the argument that inasmuch as these bunkers were filled with ice in case of precooled shipments as well as in standard refrigeration the carrier had the right to insist upon furnishing the ice even though the grower might precool his fruit. A moment's consideration will show that this contention is without merit and would if sustained be without benefit to the carrier. The ice with which these bunkers are filled is not manufactured by the railroad at the point where it is used. It would be necessary to fill the bunkers with ice at San Bernardino or Colton and move the car when iced to the packing house. By the time it reached there

40 the ice would have been partially exhausted and this would render it necessary to open and refill the bunkers.

This service should be performed in the most economical manner and it is evident that the ice can be best supplied by the same parties who load the car and prepare it for shipment. The filling of the bunkers with ice is a part of the preparation of the car for ship-

ment and not a part of the transportation service which is rendered by the railroads. It should also be noted that great importance is attached to the filling of the bunker completely and with large cakes of ice which will melt slowly.

To allow the carrier to fill these bunkers would be a source of no profit to it and would introduce an element of discord into the transaction. If the car arrived in bad condition the shipper would be apt to say that the bunkers had not been properly reiced or that the car had not been properly sealed. That uncertainty is removed where the shipper makes the car ready for transportation and the service rendered by the carrier is purely one of transportaion. It seems clear that the carrier itself would prefer that this icing should be done by the shipper rather than attempt to do it at anything like what would be the actual cost to the shipper plus a reasonable profit to the carrier.

There is another rule of law which might under some circumstances find application here, viz., that that carrier is not obliged to allow its patrons to enter into competition with itself and to furnish facilities for so doing. While precooling may not be the same thing as refrigeration it takes the place of refrigeration. Can the carrier be compelled to furnish the facilities for performing this service or to allow the shipper to perform that service which does away
41 with the necessity of refrigeration and renders useless the facilities which it has provided for rendering that service?

It does not seem necessary in this case upon the present record to express an opinion upon that question, for the reason that before the carrier can rely upon this argument it must be in shape to render an equivalent service for a substantially equivalent price. If these defendants were in a position to offer these shippers a service which in efficiency and in expense was practically the same as that offered by precooling, a different question would be presented which is not here decided.

It should be carefully observed that precooling as practiced by the shipper can not be rendered by the carrier. The nature of the thing done is such that it can only be done by the shipper. A single part of the service, the furnishing of the ice for the bunkers of the car, might be rendered by the carrier at an additional expense and with inferior result. Taken as a whole the service of precooling, as these shippers desire to use it, can only be performed by the shipper himself. Nor do the carriers offer any substitute for it. Cars can be precooled and preiced at the plants of the defendants, but the defendants themselves frankly state that they can not safely carry to destination without reicing. We do not feel that these shippers are obliged to submit their fruit to the hazard of the method of precooling and preicing, which these defendants themselves decline to guarantee.

The testimony shows that precooling as practiced by the defendants at San Bernardino and Colton saves from one to two tons of ice, and no more, so that the expense of standard refriger-
42 ation is not lessened by precooling although the efficiency of the service may be somewhat improved. In other words, the

only substitute which these defendants offer for precooling is the standard refrigeration or what is equivalent to that.

The matter, therefore, stands like this: The United States Government has suggested, and these shippers acting upon the suggestion, have perfected a system of handling these oranges, by which they can be carried during all heated months to destination at an expense of $32.50 per car approximately. The carriers offer an alternative system at a charge of $62.50, or probably slightly more on the average, and this charge for that service has been found to be reasonable. May the carriers insist that the shipper shall pay this higher charge or has the shipper a right to avail himself of the modern method?

During the season last past some 17,000 carloads of oranges moved under refrigeration. The season which is now opening will probably see an increase in that number to 20,000, and in the near future it will doubtless rise to 25,000 cars. The saving per car between the method of the shipper and the charge of the defendant is from $30 to $40, which means an annual saving to these complainants of from $600,000 to $800,000 per year. If it be the law that these defendants have a right to impose upon this traffic this enormous burden, then the law should be changed, for the practical result of this application is monstrous; in our opinion it is not the law. We think that upon the present record it is the right of these complainants to precool and preice their shipments. If the carrier has been put to additional expense in the furnishing of the car or in the handling of the shipment, it should be allowed proper compensation
43 upon that account, and this brings us to the final question: What, if any, additional compensation may the railroad charge?

For a short time after shippers began to precool and preice their cars no charge was made by the carriers over and above the ordinary rate applied to ventilated shipments. It soon became evident, however, that this method of refrigeration was much cheaper than standard refrigeration and thereupon the charge of $30 per car was imposed It will be remembered that the cost of precooling is about $32.50 per car and that the price of standard refrigeration to Chicago is $62.50 per car. The difference therefore between the cost of precooling and the rate for standard refrigeration upon the average is about $30 per car and there can be no serious question that the carriers in establishing this charge intended to equalize the cost by the two methods. This they are not entitled to do, but if they are put to additional expense for which they receive no compensation in the rate they are entitled to an additional charge sufficient to cover that expense with a reasonable profit upon the transaction.

The car used for the shipment is exactly the same whether the movement is under ventilation or refrigeration or is precooled and preiced. We have already seen that the use of this special car is taken account of in the rate of $1.15 per 100 pounds. Carriers are not, therefore, in case of these precooled shipments entitled to additional compensation by reason of the fact that a car of this type is necessary and furnished.

We have seen that in case of standard refrigeration there is an

expense in providing and keeping in repair the ice bunkers which is not presented in the ventilated movement, and this is equally true in case of the precooled shipment. The carrier is, therefore, entitled to this additional cost, which is about $5 per car per trip one way.

The bunkers are filled with somewhat more care and somewhat more compactly in case of the precooled than in case of the refrigerated shipment. Upon the Santa Fe the average weight of the ice in case of these precooled shipments would be at the packing house at least 5 tons. It was found that at the end of the journey these bunkers were from one-sixth to one-half full of ice. The melting would take place more rapidly during the early than during the later part of the journey, and it would be a liberal estimate to put the average weight of the ice during the entire journey at 5,000 pounds. For the hauling of this ice the carriers are entitled to fair compensation, as they are in the case of standard refrigeration.

It has already been said that oranges when moved under ventilation or refrigeration must be placed in the car with air spaces between the boxes, and this requires a loading of six tiers wide and two tiers high. The packers load these precooled shipments solid, which means that an additional tier can be placed in the car, thereby increasing the weight of the paying freight by exactly one-sixth. This adds in case of the Santa Fe route $53, and in case of the Southern Pacific route, those cars being somewhat larger, $55 to the freight received per car. The carrier for handling the same car with increased weight receives this additional sum while the actual additional cost of moving the car can not exceed one-half that amount.

As bearing upon the reasonableness of the rate, the carriers showed the cost of the movement of these oranges per gross ton—that is, per ton of combined weight of car and of contents as compared with other articles—claiming that this was a true basis upon which to fix rates. So treating these precooled shipments, it will be found that the carrier receives more per gross ton for handling the precooled car than for either the ventilated or the refrigerated shipment.

By every canon of rate-making which has been applied by carriers in the past, or which is relied upon by them now, these precooled shipments at the standard rate without additional compensation are better business than either the ventilated or the refrigerated movement.

Clearly these growers who have devised and perfected this system of shipment should not be compelled to pay for the privilege of using it more than the fair cost to the carrier of providing the additional facilities which are not included in the ventilated rate with a fair profit. We are of the opinion that the precooling charge of $30 per car is unreasonable and that this charge should not exceed $7.50 per car.

It is urged that to allow shippers to precool their own shipments will result in discrimination in favor of the large and against the

small shipper, but this is not apparently true under actual conditions at the present time.

Oranges must pass through a packing house, and these houses are generally available to small and large patrons alike. Any packing house of considerable size would be forced to provide itself with facilities for precooling if this method were generally introduced, and these facilities would therefore be open to growers generally.

But if they were not it is doubtful whether either the carriers or this Commission should deprive the great majority of growers
46 of the right to use this improved and more economical method simply because it could not be made universally available. This, as we have seen it, is a part of the preparation of the shipment for transportation and not of the transportation itself.

It is also stated that to permit precooling without the imposition of a greater charge than we have fixed would destroy the value of the plants which the Santa Fe and the Southern Pacific have erected at San Bernardino and Colton.

If this was so the argument would not be conclusive. There is no growth without decay. The improved process renders worthless the old machine in every field of industry. If the march of improvement has made antiquated and valueless the icing plants of these defendants, that is no reason why the better system should not be introduced.

But there is no such situation in this case. These plants of the defendants are modern in construction and were built largely in view of the experiments made by Professor Powell. They are both ice-making and precooling plants. Apparently the precooling part is of little value, since it saves nothing in the cost of standard refrigeration and does not take the place of it. If these defendants, in view of all the circumstances, have made a mistake in the erection of these facilities they have no right to insist that the public shall make good that blunder.

There is, however, no probability that these facilities will be rendered useless if the shippers are allowed to precool. We have seen that the actual cost to the shipper is between $30 and $35 per car, to which must be added $7.50 per car, and that a considerable outlay is involved. If these defendants will put into a tariff what they have so often and with such earnestness stated, viz., that
47 they desire only the fair cost of the ice used in refrigeration, no more precooling plants will be erected. If a refrigeration rate of $45 were named to Chicago, precooling would be in the main eliminated and the carriers would make a handsome profit upon the ice actually furnished.

In 1905, when we approved the reasonableness of these present refrigeration charges, the sworn testimony of the Santa Fe showed that the actual cost of the ice to the Missouri River was $54.32 per car. Consolidated Forwarding Co. v. So. Pac. Co., supra. Since then that cost has declined, until to-day it does not exceed $30 per car. If these defendants will reduce their refrigeration charges by a little over one-half this saving in cost there will be no further question of precooling.

We do not mean that these defendants are under any legal obligation to reduce their present charges for standard refrigeration, for these charges have been found to be reasonable, but we simply point out that these defendants by making good their past declarations as to the theory upon which their refrigeration charges have been established can escape what they say will be disaster to the capital invested in their icing plants. Presumably the defendants have been honest in these declarations, and it may be assumed that their icing plants were erected upon that idea.

The defendants say that if precooling and preicing by the method which the shippers advocate is feasible, then they can precool and preice at their plants with equal success. It is not denied that the cost of precooling and preicing at Colton and San Bernardino would be much less than $30 per car.

Now, if these defendants will establish for this kind of precooling a rate commensurate with the actual cost, or not much in
48 excess of the cost, to the shipper and will guarantee the result of that system, this will effectually prevent a further erection of precooling plants by the growers. The growers of California do not desire to refrigerate their shipments of oranges; they prefer that this should be done by the carriers, but they do insist that the carriers shall not charge for that service more than it can be performed for by the methods which they have devised. In this we sustain them. If the carrier does not see fit to furnish standard refrigeration at less than the present rate, and if it can not furnish precooling of the kind supplied by the shipper, then we think the shipper should be allowed to precool and preice for himself. No reason is obvious why there should be laid upon this traffic an annual burden substantially sufficient in amount to reproduce each year the facilities which these defendants say would be destroyed if permission to precool is granted.

We are of the opinion that the present precooling charges of the defendants of $30 per car are unjust and unreasonable, and that these charges should not exceed for the future $7.50 per car; but the defendants may, as a condition of making this charge, require that precooled cars be loaded seven tiers wide and two tiers high, and may provide by their tariffs a proper minimum to accomplish this result, the amount of which would depend upon the length of the car.

49 EXHIBIT B.

Order.

At a General Session of the Interstate Commerce Commission, Held at its office in Washington, D. C., on the 14th day of January, A. D. 1911.

Present:

Judson C. Clements, Charles A. Prouty, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Charles C. McChord, Balthasar H. Meyer, Commissioners.

No. 3000.

ARLINGTON HEIGHTS FRUIT EXCHANGE; CALIFORNIA FRUIT GROWERS Exchange; Victoria Avenue Citrus Association; C. E. Rumsey; Arlington Heights Fruit Company; Azusa Citrus Association; Irwindale Citrus Association; Azusa Foot Hill Citrus Association; Glendora Citrus Association; Charter Oak Citrus Association; A. P. Griffith Association; Associated Fruit Exchange; Bloomington Fruit Association; Hemet Orange Growers Association; Covina Fruit Exchange; Covina Orange Growers Association; Covina Citrus Association; Durate-Monrovia Fruit Exchange; Ontario Cucamonga Fruit Exchange; Upland Citrus Association; Citrus Fruit Association; Lemon Growers Exchange; West Ontario Citrus Association; Cucamonga Citrus Fruit Growers Association; Stewart Citrus Association; Mount View Orange
50 and Lemon Growers Association; Etiwanda Citrus Fruit Association; Cucamonga Lemon Association; Queen Colony Fruit Exchange; Corona Citrus Association; Corona Lemon Company; W. H. Jameson Association; Call Fruit Company; Redlands-Highlands Fruit Exchange; Gold Buckle Association; Redlands Fruit Association; Denman Fruit Packing Company; Riverside Fruit Exchange; Riverside Heights Orange Growers Association; La Mesa Packing Company; Pachappa Orange Growers Association; Riverside Naval Orange Company; Co-operative Fruit Growers Association; Sugar Loaf Orange Growers Association; San Antonio Fruit Exchange; Pomona Fruit Growers Exchange; Indian Hill Citrus Association; Claremont Citrus Association; San Dimas Lemon Association; Walnut Fruit Growers Association; La Verne Orange Growers Association; College Heights Orange Association; San Bernardino County Fruit Exchange; Colton Fruit Exchange; Rialto Orange and Lemon Association; Highland Orange Growers Association; Highland Exchange Association; Semi Tropic Fruit Exchange; Whittier Citrus Association; Alhambra Orange Growers Association; C. W. Leffingwell, Junior; Placentia Orange Growers Association; Pasadena Orange Growers Association; Johnson Fruit Company; Cahuenga Valley Lemon Association; Fernando Fruit Growers Association; Rivera Fruit Association; A. Duffill Association;

Sydmer Ross Association; Jesse Knight & Sons; Ojai Orange Association; Anaheim Fruit Association; Sunset Fruit Exchange; David Hewes; Santiago Orange Growers Association; Tulare County Citrus Fruit Exchange; Porterville Citrus Association; Zante Citrus Association; Tule River Association; Lemon Cove Association; Lindsay Fruit Association; Lindsay Packing House Company; Lindsay Orange Growers Association; Butte County Citrus Association; P. C. Drescher; Fairoaks Fruit Company; Fillmore Citrus Fruit Association; Crocker Sperry Company; Santa Paula Citrus Fruit Association; Escondido Fruit Growers Association; Loveless Fruit Company; Sweetwater Fruit Company; Keen & Company; Lemon Grove Fruit Growers
51 Association; Nathan W. Blanchard; Bryn Mawr Fruit Growers Association; A. B. Chapman; Chula Vista Lemon Growers Association; Colton Orange Growers Association; Grafton Citrus Association; A. C. Denman & Sons; East Highlands Citrus Association; Flagler Fruit & Packing Company; Henry Fuller & Sons; W. P. Hammon; Hanson & Seares; Highgrove Orange Growers Association; Highland Fruit Growers Association; Limoneria Company; C. F. Mohnike; E. B. Leach; National Orange Company; Ohio Lemon Company; Randolph Fruit Company; Redlands Mutual Orange Distributors; Redlands Orange Growers Association; Rialto Orange Company; San Diego Fruit Company; San Marino Growers Packing Association; West American Fruit Company; W. E. Talbot; Burr Brothers; Boydston Brothers; Pecomia Fruit Company; Highland Lemon Association; Rialto Lemon Association; Tustin Lemon Association; W. T. Henderson & Sons; California Produce Company; Tustin Packing Company; Orange Heights Fruit Association, and Azusa-Covina-Glendora Fruit Exchange

v.

Southern Pacific Company; The Atchison, Topeka & Santa Fe Railway Company; San Pedro, Los Angeles & Salt Lake Railroad Company; Abbotsford & Northeastern Railroad Company; Ahnapee & Western Railway Company; Alabama Great Southern Railroad Company; Alabama & Vicksburg Railway Company; Albia & Centerville Railway Company; Ann Arbor Railroad Company; Annapolis, Washington & Baltimore Railroad Company; Arcadia & Betsey River Railway Company; Arkansas Central Railroad Company; Arkansas & Louisiana Railway Company; Arkansas, Louisiana & Gulf Railway Company; The Arkansas Midland Railroad Company; Arkansas Southwestern Railway Company; The Ashland & Western Railway Company; Astoria & Columbia River Railroad Company; Atlanta & West Point Railroad Company; Atlanta, Birmingham & Atlantic Railroad Company, and H. M. Atkinson and S. F. Parrott, Receivers Thereof; Atlantic City Railroad Company; Atlantic Coast
52 Line Railroad Company; Baltimore & Ohio Railroad Company; Baltimore & Ohio Southwestern Railroad Company; Baltimore & Sparrow's Point Railroad Company; Baltimore, Chesapeake & Atlantic Railway Company; Baltimore Steam

Packet Company; Bangor & Portland Railway Company; Bay of Quinte Railway Company; Bayonne & New Haven Transportation Company; Beaumont, Sour Lake & Western Railway Company; The Belt Railway Company of Chicago; Berlin & New York Transportation Company; Bessemer & Lake Erie Railroad Company; Big Level & Kinzua Railroad Company; Bloomsburg & Sullivan Railroad Company; Boston & Albany Railroad Company (N. Y. C. & H. R. R., Lessee); Boston and Gloucester Steamship Company; Boston & Maine Railroad; Boyne City, Gaylord & Alpena Railroad Company; Bradford & Western Pennsylvania Railroad Company; Brinkley, Helena & Indian Bay Railroad Company; Buffalo & Susquehanna Railway Company; Buffalo, Attica & Arcade Railroad Company; Buffalo, Rochester & Pittsburgh Railroad Company; Bush Terminal Railroad Company; Calumet & Southeastern Railway Company; Canadian Northern Quebec Railway Company; Canadian Pacific Railway Company; Catasauqua & Fogelsville Railroad Company; Catskill & New York Steamboat Company; Central Hudson Steamboat Company; Central Indiana Railway Company; Central New England Railway Company; Central of Georgia Railway Company; Central Ontario Railway Company; Central Railroad Company of New Jersey; Central Railroad Company of Pennsylvania; Central Vermont Railway Company; Charleston & Western Carolina Railway Company; The Chesapeake & Ohio Railway Company; Chesapeake Steamship Company; Chesapeake Western Railway; Chester Shipping Company; Chicago, Anamosa & Northern Railway Company; The Chicago & Alton Railroad Company; Chicago & Eastern Illinois Railroad Company; Chicago & Erie Railroad Company; Chicago & Illinois Midland Railway Company; Chicago & North Western Railway Company; Chicago, Burlington
53 & Quincy Railroad Company; The Chicago, Cincinnati & Louisville Railroad Company, and James P. Goodrich, Receiver Thereof; Chicago Great Western Railroad Company; Chicago, Indianapolis & Louisville Railway Company; Chicago, Indiana & Southern Railroad Company; Chicago, Kalamazoo & Saginaw Railway Company; Chicago, Lake Shore & Eastern Railway Company; Chicago, Milwaukee & St. Paul Railway Company; Chicago, Peoria & St. Louis Railway Company of Illinois, and John P. Ramsey and H. M. Merriam, Receivers Thereof; Chicago, Rock Island & El Paso Railway Company; The Chicago, Rock Island & Gulf Railway Company; The Chicago, Rock Island & Pacific Railway Company; Chicago Short Line Railway Company; Chicago, St. Paul, Minneapolis & Omaha Railway Company; The Chicago Southern Railway Company, and Myron J. Carpenter, Receiver Thereof; Chicago Terminal Transfer Railroad Company, and John N. Faithorn, Receiver Thereof; Chicago, West Pullman & Southern Railway Company; The Cincinnati & Muskingum Valley Railroad Company; The Cincinnati, Hamilton & Dayton Railway Company; The Cincinnati, Lebanon & Northern Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; The Cincinnati Northern Rail-

road Company; The Cleveland, Akron & Columbus Railway Company; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Coal & Coke Railway Company; Colfax Northern Railroad Company; The Colorado & Southeastern Railway Company; The Colorado & Southern Railway Company; The Colorado & Wyoming Railway Company; The Colorado Midland Railway Company; Colorado Southern, New Orleans & Pacific Railroad Company; Colt's Express Company; Columbia, Newberry & Laurens Railroad Company; Cornwall Railroad Company; Cornwall & Lebanon Railroad Company; Coudersport & Port Allegany Railroad Company; Crittenden Railroad Company; Crooked Creek Railroad & Coal Company; Cumberland & Pennsylvania Railroad Company; The Cumberland Valley Railroad
54 Company; Dansville & Mount Morris Railroad Company; Dardanelle, Ola & Southern Railway Company; The Dayton & Union Railroad Company; Delaware & Eastern Railway Company; The Delaware & Hudson Company; The Delaware, Lackawanna & Western Railroad Company; The Denison & Pacific Suburban Railway Company; The Denver & Rio Grande Railroad Company; Des Moines, Iowa Falls & Northern Railway Company; Detroit & Charlevoix Railroad Company; Detroit & Mackinac Railway Company; Detroit & Toledo Shore Line Railroad Company; Detroit, Toledo & Ironton Railway Company, and Geo. K. Lowell, Benj. S. Warren, Thos. D. Rhodes, Receivers Thereof; Devall's Bluff Navigation Company; Duluth, South Shore & Atlantic Railway Company; The Dunkirk, Allegeny Valley & Pittsburgh Railroad Company; East Jersey Terminal & Railroad Company; East Jordan & Southern Railroad Company; The Eastern Railway Company of New Mexico; Eastern Steamship Company; El Dorado & Bastrop Railway Company; Elgin, Joliet & Eastern Railway Company; Elizabethport Lighterage Company; El Paso & Northeastern Railway Company; El Paso & Northeastern Railroad Company; El Paso & Rock Island Railway Company; El Paso & Southwestern Railroad Company of Texas; El Paso & Southwestern Railroad Company; Erie Railroad Company; Escanaba & Lake Superior Railroad Company; Evansville & Indianapolis Railroad Company; Evansville & Terre Haute Railroad Company; Fairchild & Northeastern Railway; Farmersville & Southern Railroad Company; Fonda, Johnstown & Gloversville Railroad Company; Fort Dodge, Des Moines & Southern Railroad Company; Fort Smith & Western Railroad Company; Fort Wayne, Cincinnati & Louisville Railroad Company; Fort Worth & Denver City Railway Company; Fort Worth & Rio Grande Railway Company; Frontier Steamboat Company; Fuller's Express Company; Gainesville Midland Railway; Galt, Preston & Hespeler Railway Company; The Galveston, Harrisburg & San Antonio Railway Company; Galveston, Hous-
55 ton & Henderson Railroad Company; Genesee & Wyoming Railroad Company; Georges Valley Railroad Company; Georgia Railroad; Georgia & Florida Railway; The Georgia, Florida & Alabama Railway Company; Georgia Northern Rail-

way Company of Georgia; Georgia Southern & Florida Railway Company; The Gettysburg & Harrisburg Railway Company; Goodrich Transit Company; Grafton & Upton Railroad Company; Grand Rapids & Indiana Railway Company; Grand Trunk Railway Company; The Great Northern Railway Company; Great Western Railway Company; Green Bay & Western Railroad Company; Gulf, Colorado & Santa Fe Railway Company; Gulf Line Railway Company; Gulf & Ship Island Railroad Company; Hardwick & Woodbury Railroad Company; Hartford & New York Transportation Company; The Hocking Valley Railway Company; Hoosac Tunnel & Wilmington Railroad Company; Hudson Navigation Company; Hunters Run & Slate Belt Railroad Company; The Huntingdon & Broad Top Mountain Railroad & Coal Company; Houston & Shreveport Railroad Company; Houston & Texas Central Railway Company; The Houston East & West Texas Railway Company; Illinois Central Railroad Company; Illinois, Iowa & Minnesota Railway Company; Illinois Northern Railway; The Illinois Southern Railway Company; Illinois Terminal Railroad Company; The Illinois Valley Belt Railroad Company; Indiana Harbor Belt Railroad Company; Indianapolis Southern Railroad Company; Intercolonial Railway Company; International & Great Northern Railroad Company and T. J. Freeman, Receiver Thereof; Iola & Northern Railroad Company; Iowa Central Railway Company; Iowa & St. Louis Railway Company; Irondale, Bancroft & Ottawa Railway Company; Ironton Railroad Company; Jamestown, Chautauqua & Lake Erie Railway Company; Kalamazoo, Lake Shore and Chicago Railway Company; The Kanawha & Michigan Railway Company; Kane & Elk Railroad Company; Kanona & Prattsburgh Railway Company; The Kansas City, Clinton & Springfield Railway Company; The Kansas City, Mexico & Orient
56 Railway Company; Kansas City, Mexico & Orient Railway Company of Texas; The Kansas City Southern Railway Company; The Kansas Southwestern Railway Company; Kewaunee, Green Bay & Western Railroad Company; Kingston & Pembroke Railway Company; La Crosse & Southeastern Railway Company; The Lake Erie, Alliance & Wheeling Railroad Company; The Lake Erie & Western Railroad Company; Lake Michigan Car Ferry Transportation Company; The Lakeside & Marblehead Railroad Company; The Lake Shore & Michigan Southern Railway Company; Lake Superior & Ishpeming Railway Company; The Leavenworth & Topeka Railway Company; Leetonia Railway Company; The Lehigh & Hudson River Railway Company; Lehigh & Lackawanna Railroad Company; Lehigh & New England Railroad Company; Lehigh Valley Railroad Company; Little Falls & Dolgeville Railroad Company; Little Rock & Hot Springs Western Railroad Company; Little Rock & Monroe Railway Company; Lorain & West Virginia Railway Company; Louisiana & Arkansas Railway Company; Louisiana & Pacific Railway Company; Louisiana Railway & Navigation Company; Louisiana Western Railroad Company; Louisville & Nashville Railroad Company; Louisville, Henderson & St. Louis Railway

Company; Macon & Birmingham Railway Company and S. F. Parrott, Receiver Thereof; Macon, Dublin & Savannah Railroad Company; Maine Central Railroad Company; Maine Coast Transportation Company; Maine Steamship Company; Mallory Steamship Company; Manchester & Oneida Railway Company; Manistee & Grand Rapids Railroad Company; Manistee & Northeastern Railroad Company; Manistique & Northern Railroad Company; Marietta, Columbus & Cleveland Railroad Company; Marinette, Tomahawk & Western Railway Company; Marquette & Southeastern Railway Company; Maryland & Pennsylvania Railroad Company; Maryland, Delaware & Virginia Railway Company; Merchants & Miners Transportation Company; Metropolitan Steamship Company,
57 and W. T. Cobb, Calvin Austin, Abel I. Culver, Receivers Thereof; Michigan Central Railroad Company; Midland Valley Railroad Company; Mineral Point & Northern Railway Company; The Minneapolis & St. Louis Railroad Company; Minneapolis, St. Paul & Sault Sainte Marie Railway Company; Mississippi River, Hamburgh & Western Railway Company; Missouri & North Arkansas Railroad Company; Missouri, Kansas & Texas Railway Company; Missouri, Kansas & Texas Railway Company of Texas; Missouri, Oklahoma & Gulf Railway Company; The Missouri Pacific Railway Company; Mobile & Ohio Railroad Company; Mobile, Jackson & Kansas City Railroad Company; The Monongahela Connecting Railroad Company; The Monongahela Railroad Company; Montour Railroad Company; Montpelier & Wells River Railroad; Morgan's Louisiana & Texas Railroad & Steamship Company; Morgantown & Kingwood Railroad Company; Morristown & Erie Railroad Company; Moshassuck Valley Railroad Company; Munishing Railway Company; Murray's Line; Muscatine North & South Railway Company; Mt. Jewett, Kinzua & Riterville Railroad Company; Narragansett Pier Railroad Company; Nashville, Chattanooga & St. Louis Railway; Natchez & Louisiana Railway Transfer Company; Natchez & Southern Railway Company; Newark Bay Short Line; Newark Despatch Boat Line; Newark Express and Transportation Company; Newark & Marion Railway Company; New England Navigation Company; New Jersey & New York Railroad Company; New Jersey & Pennsylvania Railroad Company; New Orleans & Northeastern Railroad Company; New Orleans & Northwestern Railroad Company; Newton & Northwestern Railroad Company; New Park & Fawn Grove Railroad Company; Newport & Wickford Railroad & Steamboat Company; New York & Baltimore Transportation Company; New York & Hastings Steamboat Company; New York & Hudson Steamboat Company; The New York & Long Branch Railroad Company; New York &
58 Ottawa Railway Company; New York & Pennsylvania Railway Company; The New York Central & Hudson River Railroad Company; The New York, Chicago & St. Louis Railroad Company; The New York, New Haven & Hartford Railroad Company; New York, Ontario & Western Railway Com-

pany; New York, Philadelphia & Norfolk Railroad Company; New York, Susquehanna & Western Railroad Company; Niagara, St. Catherine & Toronto Navigation Company; Niagara, St. Catherine & Toronto Railway Company; Norfolk & Southern Railway Company, and H. K. Wolcott, Hugh M. Kerr, Receivers Thereof; Norfolk & Western Railway Company; Norfolk & Washington Steamboat Company; Northampton & Bath Railroad Company; The Northern Central Railway Company; The Northern Ohio Railway Company; Northern Pacific Railway Company; Northwestern Pacific Railroad Company; Norwich & New York Propeller Company; Ocean Steamship Company of Savannah; Oklahoma Central Railway Company, and Asa E. Ramsay, Receiver Thereof; Old Dominion Steamship Company; Opelousas, Gulf & Northeastern Railway Company; The Orange & Northwestern Railroad Company; The Oregon Railroad & Navigation Company; Oregon Short Line Railroad Company; Orford Mountain Railway Company; Ottawa & New York Railway Company; Pacific Coast Steamship Company; Paris & Great Northern Railroad Company; The Pecos & Northern Texas Railway Company; The Pecos River Railroad Company; The Pemberton & Hightstown Railroad Company; Pennsylvania Company; The Pennsylvania Railroad Company; Peoria Railway Terminal Company; Pere Marquette Railroad Company; Pere Marquette Line Steamers; Peoria & Pekin Union Railway Company; Perris & Lakeview Railway Company; Philadelphia, Baltimore & Washington Railroad Company; Philadelphia & Reading Railway Company; Pittsburgh & Moon Run Railroad Company; The Pittsburgh, Chartiers & Youghiogheny Railway Company; The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; The
59 Pittsburgh & Lake Erie Railroad Company; The Pittsburgh, Lisbon & Western Railroad Company; The Pittsburgh, Shawmut & Northern Railroad Company, and Frank S. Smith, Receiver Thereof; Pontiac, Oxford & Northern Railroad Company, and R. T. Lounsbury, Receiver Thereof; Port Chester Transportation Company; Portland & Boothbay Steamship Company; Prescott & Northwestern Railroad Company; Quebec, Montreal & Southern Railway Company; Quincy, Omaha & Kansas City Railroad Company; Rahway Valley Railroad Company; Rapid Railroad Company; Raritan River Railroad Company; Reynoldsville & Falls Creek Railroad Company; Richmond Belt Railway; Richmond, Fredericksburg & Potomac Railroad Company; Rock Island Southern Railroad Company; Rutland Railroad Company; St. Johnsbury & Lake Champlain Railroad Company; The St. Joseph & Grand Island Railway Company; St. Lawrence & Adirondack Railway Company; St. Louis & Hannibal Railway Company; St. Louis & San Francisco Railroad Company; St. Louis, Brownsville & Mexico Railway Company; St. Louis, El Reno & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; St. Louis, Kansas City & Colorado Railroad Company; St. Louis Merchants Bridge Terminal Railway Company; St. Louis, San Francisco & Texas Railway Com-

pany; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; St. Louis, Watkins & Gulf Railway Company; St. Maurice Valley Railway Company; St. Paul & Des Moines Railroad Company; San Antonio & Aransas Pass Railway Company; San Diego, Cuyamaca & Eastern Railway Company; San Diego Southern Railway Company; Sandy River & Rangeley Lakes Railroad; Santa Fe Refrigerator Despatch Company; Saugerties and New York Steamboat Company; Seaboard Air Line Railway; Sheffield & Tionesta Railway Company; The Silver Lake Railway Company; Somerset Railway Company; South Brooklyn Railway Company; The Southern Indiana Railway Company and Myron J. Carpenter, Receiver Thereof; The Southern Kansas Railway Company of
60 Texas; South Georgia Railway Company; South Manchester Railroad Company; Southern Railway Company; Southern Railway Company in Mississippi; Stanley, Merrill & Phillips Railway Company; The Staten Island Rapid Transit Railway Company; Stephens and Condit Transportation and Forwarding Company; Stephenville, North & South Texas Railway Company; Stewartstown Railroad Company; Sugar Land Railway Company; Sunset Railroad Company; Susquehanna, Bloomsburg & Berwick Railroad Company; Susquehanna & New York Railroad Company; Tennessee Central Railroad Company; Terminal Railroad Association of St. Louis; Texarkana & Fort Smith Railway Company; The Texas & Gulf Railway Company; Texas & New Orleans Railroad Company; The Texas & Pacific Railway Company; Texas Central Railroad Company; Texas City Terminal Company; Texas Midland Railroad; Texas Southern Railway Company; Thousand Islands Railway Company; Tidewater Transportation Company; Tionesta Valley Railway Company; The Toledo & Ohio Central Railway Company; Toledo, Peoria & Western Railway Company; The Toledo Terminal Railroad Company; Toledo, St. Louis & Western Railroad Company; Toluca, Marquette & Northern Railroad Company and W. H. Boys, James E. Hurley, Cyrus Leland, Receivers Thereof; Toronto, Hamilton & Buffalo Railway Company; Tremont & Gulf Railway Company; The Trinity & Brazos Valley Railway Company; The Tuckerton Railroad Company; Union Pacific Railroad Company; Union Railroad Company; Union Springs & Northern Railway Company; Ursina & North Fork Railway Company; Valley Railroad Company (of Pennsylvania); The Valley Railroad Company of Virginia; Vandalia Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Virginia & Southwestern Railway Company; The Wabash Railroad Company; The Wabash, Chester & Western Railroad Company; The Wabash, Pittsburgh Terminal Railway Company, and W. H. McMaster, F. H. Skelding, Receivers Thereof; Warner's Philadelphia and Wilmington Steam Propeller Line; Warren & Ouachita Val-
61 ley Railway Company; Washington County Railway Company; The Washington, Potomac & Chesapeake Railroad Company; Washington Run Railroad Company; Washington

Southern Railway Company; Waterloo, Cedar Falls & Northern Railway Company; Waupaca-Green Bay Railway; The Weatherford, Mineral Wells & Northwestern Railway Company; West Coast Railway Company; Western & Atlantic Railroad; West Jersey & Seashore Railroad Company; Western Maryland Railroad Company and B. F. Bush, Receiver Thereof; The Western Railway of Alabama; West Shore Railroad Company; West Side Belt Railroad Company, and H. W. McMaster, F. H. Skelding, Receivers Thereof; West Virginia Northern Railroad Company; Wharton & Northern Railroad Company; The Wheeling & Lake Erie Railroad Company, and B. A. Worthington, Receiver Thereof; Wichita Falls & Northwestern Railway Company; Wichita Falls & Northwestern Railway Company of Texas; Wichita Falls & Southern Railway Company; The Wichita Valley Railway Company; Wiggins Ferry Company; Wilkes-Barre & Eastern Railroad Company; Williamsport & North Branch Railroad Company; The Williams Valley Railroad Company; Wisconsin & Michigan Railway Company; Wisconsin & Northern Railroad Company; Wisconsin Central Railway Company; Wood River Branch Railroad Company; Wrightsville & Tennille Railroad Company; The Yazoo & Mississippi Valley Railroad Company; The Youngstown & Ohio River Railroad Company; Zanesville & Western Railway Company; Abilene & Southern Railway Company; Albany & Northern Railway Company; The Arkansas, Oklahoma & Western Railroad Company; The Arkansas Western Railway Company; Bangor & Aroostook Railroad Company; Bath & Hammondsport Railroad Company; Blaney & Southern Railway Company; Brandon, Saskatchewan & Hudson's Bay Railway Company; Brockville, Westport & Northwestern Railway Company; Bush Line (Geo. W. Bush & Sons Co.); Calumet, Hammond & Southeastern Railroad Company; Canadian Northern Railway Company; Canadian Northern Ontario Rail-
62 way Company; Canadian Pacific Car and Passenger Transfer Company, Limited; Chatham, Wallaceburg & Lake Erie Railway Company; Chicago & Illinois Western Railroad; Chicago Lighterage Company; Chicago, Milwaukee & Gary Railway Company; Chippewa Valley & Northern Railway Company; Clyde Steamship Company; Copper Range Railroad Company; Essex Terminal Railway Company; Frankfort & Cincinnati Railway Company; The Gulf & Interstate Railway Company of Texas; Gulf & Sabine River Railroad Company; Hackensack & New York Steamboat Company; Hamilton, Grimsby & Beamsville Electric Railway Company; Lake Charles & Northern Railroad Company; Litchfield & Madison Railway Company; Lotbiniere & Megantic Railway Company; Maine Coast Company; Manitoba & Great Northern Railway Company; Manufacturers' Junction Railway Company; Memphis, Paris & Gulf Railroad Company; Merchants Lighterage Company; Middlesex Transportation Company; Midland Railway Company of Manitoba; Mineral Range Railroad Company; Minnesota & International Railway Company; Mississippi Central Railroad Company; Natchez & Western

Railway Company and C. B. Brownell, Agent for Trustee; New Orleans Great Northern Railroad Company; New York & Albany Transportation Company; North Pacific Steamship Company; Northport Steamboat Company; Ouachita Valley Railway Company; Pacific Fruit Express Company; Penn Steamship Line; Perla Northern Railroad Company; Rio Grande & Eagle Pass Railway Company; Roscoe, Snyder & Pacific Railway; South Dakota Central Railway Company; South Georgia Railway Company; West Coast Railway Company; Southern Pacific Company; Atlantic Steamship Lines (Morgan Line); Spokane, Portland & Seattle Railway Company; Starin New Haven Line; The Texas Mexican Railway Company; The Virginian Railway Company; Warren, Johnsville & Saline River Railroad Company; Washington, Baltimore & Annapolis Electric Railway Company, and Windsor, Essex & Lake Shore Rapid Railway Company.

This case coming on to be further heard upon the issue as to the reasonableness of the refrigeration charges, and having been submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, and having found that the above-named defendants' present charge of $30 per car upon oranges when precooled and preiced by the shipper transported in carloads from shipping and producing points in southern California to points in other states of the United States designated in Transcontinental Freight Bureau East-Bound Tariffs No. 3-I (I. C. C. No. 926), effective October 10, 1910, and No. 7-C (I. C. C. No. 921), effective April 18, 1910, is, to the extent that said charge exceeds $7.50 per car, unreasonable and unjust:

It is ordered, That the order heretofore entered in this case is modified, and that said defendants, according as their routes may run, be, and they are hereby, notified and required to cease and desist, on or before the 15th day of April, 1911, and for a period of not less than two years thereafter abstain, from exacting their present charge of $30 per car upon oranges precooled and preiced by the shipper transported in carloads from shipping and producing points in southern California to points in other states of the United States designated in Transcontinental Freight Bureau East-Bound Tariffs No. 3-I (I. C. C. No. 926), effective October 10, 1910, and No. 7-C (I. C. C. No. 921), effective April 18, 1910.

It is further ordered, That said defendants, according as their routes may run, be, and they are hereby notified and required to establish, on or before the 15th day of April, 1911, and maintain in force thereafter during a period of not less than two years, a charge upon oranges precooled and preiced by the shipper transported in carloads from shipping and producing points in southern California to points in other states of the United States designated in Transcontinental Freight Bureau East-Bound Tariffs No. 3-I (I. C. C. No. 926), effective October 10, 1910, and No. 7-C (I. C. C. No. 921), effective April 18, 1910, which shall not exceed $7.50 per car;

but said defendants may, as a condition of making this charge, require that such cars be loaded with boxes of oranges seven
64 tiers wide and two tiers high, and may provide by their tariffs a proper minimum carload weight to accomplish this result, the amount of which to depend upon the dimensions of each car.

I, Edward A. Moseley, Secretary of the Interstate Commerce Commisson, do hereby certify that the papers hereto attached and entitled Report and Order of the Commission are true copies of the originals now on file in the office of this Commission.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the Commission, this 11th day of March, 1911.

[SEAL.] E. A. MOSELEY, *Secretary.*

65 EXHIBIT C.

Interstate Commerce Commission.

Order.

At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 22nd Day of June, A. D. 1911.

Investigation and Suspension Docket No. 50-A.

In the Matter of the Investigation and Suspension of Certain Regulations and Practices with Regard to Precooling and Preicing.

It appearing, That there has been filed with the Interstate Commerce Commission a tariff containing schedules stating new individual and joint regulations and practices affecting rates and charges, to become effective the 1st day of July, 1911, designated as follows:

Supplement No. 4 to "Santa Fe System," Tariff No. 8123-D, Supplement No. 4 to I. C. C. No. 5288.

It is ordered, That the Commission, upon complaint, without formal pleading, enter upon a hearing concerning the propriety of the advances, and the lawfulness of the regulations and practices, stated in the schedules contained in said tariff in Items No. 889 and No. 890, on page No. 3 thereof.

It further appearing, That from a consideration of the character and amount of the advances, and the circumstances under which they have been made, and the rights and interests of the public af-
66 fected thereby, it is the opinion of the Commission that the effective date of the schedules above specified should be postponed pending the hearing and decision, therefore,

It is further ordered, That the operation of the schedules above specified contained in said tariff be suspended, and that the use of the regulations and practices therein stated be deferred until the 28th day of October, 1911.

And it is further ordered, That the several carriers hereinafter named be made defendants to this proceeding, and that they be duly notified of the time and place of the hearing above ordered, and that a copy of this order be forthwith served upon each of them, viz:

67 EXHIBIT D.

Interstate Commerce Commission.

Order.

At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 22nd day of June, A. D. 1911.

Investigation and Suspension Docket No. 50-B.

In the Matter of the Investigation and Suspension of Certain Regulations and Practices with Regard to Precooling and Preicing.

It appearing, That there has been filed with the Interstate Commerce Commission a tariff containing schedules stating new individual and joint regulations and practices affecting rates and charges, to become effective the first day of July, 1911, designated as follows:

Supplement No. 8 to "Santa Fe System," Tariff No. 8123-D, Supplement No. 8 to I. C. C. No. 5288.

It is ordered, That the Commission, upon complaint, without formal pleading, enter upon a hearing concerning the propriety of the advances and the lawfulness of the regulations and practices, stated in the schedules contained in said tariff, in items No. 889-A and 890-A on page 3 thereof.

It further appearing, That from a consideration of the character and amount of the advances, and the circumstances under which they have been made, and the rights and interests of the public affected thereby, it is the opinion of the Commission that the effective date of the schedules above specified should be postponed pending the hearing and decision, Therefore,

68 It is further ordered, That the operation of the schedules above specified contained in said tariff be suspended, and that the use of the regulations and practices therein stated be deferred until the 28th day of October, 1911.

And it is further ordered, That the several carriers hereinafter named be made defendants to the proceeding, and that they be duly notified of the time and place of the hearing above ordered, and that a copy of this order be forthwith served upon each of them, viz:

69 EXHIBIT E.

Order.

Interstate Commerce Commission.

At a General Session of the Interstate Commerce Commission, Held at its office in Washington, D. C., on the 16th day of October, A. D. 1911.

Investigation and Suspension Docket No. 50-D.

In the Matter of the Investigation and Suspension of Certain Regulations and Practices with Regard to Precooling and Preicing.

It appearing, That there has been filed with the Interstate Commerce Commission a tariff containing schedules stating new individual and joint regulations and practices affecting rates and charges, to become effective the 28th day of October, 1911, designated as follows:

Santa Fe System Tariff No. 8123-E, I. C. C. No. 5688.

It is ordered, That the Commission, upon complaint, without formal pleading, enter upon a hearing concerning the propriety of the advances and the lawfulness of the regulations and practices stated in the schedules contained in said tariff in items No. 6 and 77 on pages No. 11 and 17, respectively, thereof,

It further appearing, That from a consideration of the character and amount of the advances, and the circumstances under which they have been made and the rights and interests of the public affected thereby, it is the opinion of the Commission that the

70 effective date of the schedules above specified should be postponed pending the hearing and decision, therefore,

It is further ordered, That the operation of the schedules above specified contained in said tariff be suspended, and that the use of the regulations and practices therein stated be deferred until the 24th day of February, 1912.

And it is further ordered, That the several carriers hereinafter named be made defendants to this proceeding, and that they be duly notified of the time and place of the hearing above ordered, and that a copy of this order be forthwith served upon each of them, viz:

71

Exhibit F.

Order.

Interstate Commerce Commission.

At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 16th Day of October, A. D. 1911.

Investigation and Suspension Docket No. 50-E.

In the Matter of the Investigation and Suspension of Certain Regulations and Practices with Regard to Precooling and Preicing.

It appearing, That there has been filed with the Interstate Commerce Commission a tariff containing schedules stating new individual and joint regulations and practices affecting rates and charges, to become effective the 28th day of October, 1911, designated as follows:

Supplement No. 2 to Santa Fe System Tariff No. 8123-E.

Supplement No. 2 to I. C. C. No. 5688.

It is ordered, That the Commission, upon complaint, without formal pleading, enter upon a hearing concerning the propriety of the advances and the lawfulness of the regulations and practices, stated in the schedules contained in said tariff reading as follows:

Expires October 27, 1911, unless sooner canceled, changed or extended. After cancellation, Item No. 6 of tariff will apply.

Expires October 27, 1911, unless sooner canceled, changed or extended. After cancellation, Items Nos. 77 and 669 of tariff, or as amended, will apply.

72 It further appearing, That from a consideration of the character and amount of the advances, and the circumstances under which they have been made, and the rights and interests of the public affected thereby, it is the opinion of the Commission that the effective date of the schedules above specified, should be postponed pending the hearing and decision; therefore,

It is further ordered, That the operation of the schedules above specified contained in said tariff be suspended and that the use of the regulations and practices therein stated be deferred until the 24th day of February, 1912.

And it is further ordered, That the several carriers hereinafter named be made defendants to this proceeding, and that they be duly notified of the time and place of the hearing above ordered, and that a copy of this order be forthwith served upon each of them.

73 EXHIBIT G.

Order.

Interstate Commerce Commission.

At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 6th Day of February, A. D. 1912.

Investigation and Suspension Docket No. 50-F.

In the Matter of the Investigation and Suspension of Certain Regulations and Practices with Regard to Precooling and Preicing.

It appearing, That there has been filed with the Interstate Commerce Commission a tariff containing schedules stating new individual and joint regulations and practices affecting rates and charges, to become effective the 10th day of February, 1912, designated as follows:

"Santa Fe System" Tariff No. 8123-F, I. C. C. No. 5864.

It is ordered, That the Commission, upon complaint, without formal pleading, enter upon a hearing concerning the propriety of the advances and the lawfulness of the regulations and practices stated in the schedules contained in said tariff in item No. 6 on page No. 12 thereof, and in item No. 75 on pages Nos. 17 and 18 thereof.

It further appearing, That from a consideration of the character and amount of the advances, and the circumstances under which they have been made, and the rights and interests of the public affected thereby, it is the opinion of the Commission that the
74 effective date of the schedules above specified should be postponed pending the hearing and decision, therefore,

It is further ordered, That the operation of the schedules above specified contained in said tariff be suspended, and that the use of the regulations and practices therein stated be deferred until the 1st day of June, 1912.

And it is further ordered, That the several carriers hereinafter named be made defendants to this proceeding, and that they be duly notified of the time and place of the hearing above ordered and that a copy of this order be forthwith served upon each of them.

EXHIBIT H.

Order.

Interstate Commerce Commission.

At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 20th day of July, A. D. 1911.

Investigation and Suspension Docket No. 50-C.

In the Matter of the Investigation and Suspension of Certain Regulations and Practices with Regard to Precooling and Preicing.

It appearing, That there has been filed with the Interstate Commerce Commission a tariff containing schedules stating new individual and joint regulations and practices affecting rates and charges, to become effective the 29th day of July, 1911, designated as follows:

San Pedro, Los Angeles & Salt Lake Railroad Co., Supplement No. 7 to I. C. C. No. 325.

It is ordered, That the Commission, upon complaint, without formal pleading, enter upon a hearing concerning the propriety of the advances and the lawfulness of the regulations and practices, stated in the schedules contained in said tariff, on page 8 thereof, reading as follows:

Instructions from Shipper to Ice or Reice.

Item No. 4-A. Cancels item No. 4.

(*a*) No instructions from shippers as to icing or reicing are necessary on commodities subject to this tariff. The acceptance of different or exceptional instructions will be optional with the carrier, and when so tendered for shipment by the shipper shall bear on the shipping order, under the signature of the shipper, notation as follows:

"The giving and acceptance of these special instructions releases the initial carrier and its connections from all liability (through to final destination) for damage not caused by negligence of said carriers."

Such notations must be entered by the forwarding agent upon the regular waybill.

(*b*) When shippers instruct that commodities loaded in cars the tanks of which contain ice, are not to be reiced in transit, the full refrigeration charge published herein shall apply.

and in Section A of item No. 13-B on page 3 thereof, reading as follows:

A. Effective on and after July 29, 1911, the privilege heretofore permitted to shippers of citrus fruit to preice carload shipments will be withdrawn, the carriers retaining and exercising the exclusive

right and control of furnishing and billing all icing and refrigeration of citrus fruits in all cases where shipper does not specifically request or direct shipment to move solely under ventilation.

The withdrawal of the privilege formerly granted shippers to preice shipments is effective regardless of the rate provided in section "B" of this item for shipments preiced by shippers.

It further appearing, That from a consideration of the character and amount of the advances, and the circumstances under
77 which they have been made, and the rights and interests of the public affected thereby, it is the opinion of the Commission that the effective date of the schedules above specified should be postponed pending the hearing and decision: Therefore

It is further ordered, That the operation of the schedules above specified contained in said tariff be suspended, and that the use of the regulations and practices therein stated, and above specified, be deferred until the 25th day of November, 1911.

And it is further ordered, That the several carriers hereinafter named be made defendants to this proceeding, and that they be duly notified of the time and place of the hearing above ordered, and that a copy of this order be forthwith served upon each of them, viz:

78 EXHIBIT I.

At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 16th Day of October, A. D. 1911.

Investigation and Suspension Docket No. 50-C.

In the Matter of the Investigation and Suspension of Certain Regulations and Practices with Regard to Precooling and Preicing.

It appearing, That by an order dated the 20th day of July, A. D. 1911, the Interstate Commerce Commission entered upon a hearing concerning the propriety of the new individual and joint regulations and practices affecting rates and charges stated in schedules contained in a tariff designated as follows:

San Pedro, Los Angeles & Salt Lake Railroad Co. Supplement No. 7 to I. C. C. No. 325.

It further appearing, That pending such hearing and decision the Commission ordered that the operation of certain schedules contained in said tariff specified in said order dated the 20th day of July, 1911, be suspended, and that the use of the regulations and practices, therein stated, be deferred until the 25th day of November, 1911, and,

It further appearing, That such hearing cannot be concluded within the period of suspension above stated.

It is ordered: That the operation of said schedules contained in the tariff above designated be further suspended and that the use of the regulations and practices stated in said schedules contained

said tariff be further deferred until the 28th day of April, A. D. 1912.

It is further ordered, That the defendants to this proceeding be forthwith served with a copy of this order.

A true copy:

(Signed) JUDSON C. CLEMENTS,
Chairman.

EXHIBIT J.

Order.

Interstate Commerce Commission.

At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 22d Day of June, A. D. 1911.

Investigation and Suspension Docket No. 50.

In the Matter of the Investigation and Suspension of Certain Regulations and Practices with Regard to Precooling and Preicing.

It appearing, That there has been filed with the Interstate Commerce Commission a tariff containing schedules stating new individual and joint regulations and practices affecting rates and charges, to become effective the 1st day of July, 1911, designated as follows: Southern Pacific Company, Supplement No. 3 to I. C. C. No. 3318. Joint Refrigeration Tariff No. 359-C.

It is ordered, That the Commission upon complaint, without formal pleading, enter upon a hearing concerning the propriety of the advances and the lawfulness of the regulations and practices stated in the schedules contained in said tariff, on page No. 2 thereof, reading as follows:

Cancellation.

Effective on and after July 1, 1911, the "exception" in item No. 5 of general rules on page 9 of tariff shall be canceled and eliminated so that on and after said date said item No. 5 shall be amended so as to read as follows: "When shipper instructs that commodities loaded in cars, the tanks of which contain ice, are not to be reiced in transit, the full refrigeration rates published herein shall apply."

Effective on and after July 1, 1911, first paragraph of item No. 134, under section 2, "Rules," on page 32 of tariff, will be canceled and eliminated, and the privilege heretofore permitted to shippers of citrus fruit to preice carload shipments will be withdrawn, the carriers retaining and exercising the exclusive right and control of furnishing and billing all icing and refrigeration of citrus fruits in all cases where shipper does not specifically request or direct shipment to move solely under ventilation.

It further appearing, That from a consideration of the character and amount of the advances, and the circumstances under which they have been made, and the rights and interests of the public affected thereby, it is the opinion of the Commission that the effective date of the schedules above specified should be postponed pending the hearing and decision. Therefore,

It is further ordered, That the operation of the schedules above specified contained in said tariff be suspended, and that the use of the regulations and practices therein stated and above specified be deferred until the 28th day of October, 1911.

And it is further ordered, That the several carriers hereinafter named be made defendants to this proceeding, and that they be duly notified of the time and place of the hearing above ordered, and that a copy of this order be forthwith served upon each of them, viz:

81 EXHIBIT K.

At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 16th Day of October, A. D. 1911.

Investigation and Suspension Docket No. 50.

In the Matter of the Investigation and Suspension of Certain Regulations and Practices with Regard to Precooling and Preicing.

It appearing, That by an order dated the 22nd day of June, A. D. 1911, the Interstate Commerce Commission entered upon a hearing concerning the propriety of the new individual and joint regulations and practices affecting rates and charges stated in schedules contained in a tariff designated as follows:

Southern Pacific Company, Supplement No. 3 to I. C. C. No. 3318, Joint Refrigeration Tariff No. 359C.

It further appearing, That pending such hearing and decision the Commission ordered that the operation of certain schedules contained in said tariff specified in said order dated the 22nd day of June, A. D. 1911, be suspended, and that the use of the regulations and practices, therein stated, be deferred until the 28th day of October, 1911, and,

It further appearing, That such hearing cannot be concluded within the period of suspension above stated.

It is ordered, That the operation of said schedules contained in the tariff above designated be further suspended and that
82 the use of the regulations and practices stated in said schedules contained in said tariff be further deferred until the 28th day of April, A. D. 1912.

It is further ordered, That the defendants to this proceeding be forthwith served with a copy of this order.

A true copy:
(Signed) JUDSON C. CLEMENTS,
Chairman.

EXHIBIT L.

Opinion No. 1851.

Interstate Commerce Commission.

Investigation and Suspension Docket Nos. 50, 50C, and 50F.

In the Matter of the Investigation and Suspension of Certain Regulations and Practices with Regard to Precooling and Preicing.

Submitted March 20, 1912; Decided April 8, 1912.

Carriers involved herein, complying with an order of this Commission, filed tariffs establishing the rate of $7.50 per car for precooling oranges shipped from points in southern California to the east, but immediately thereafter they filed other tariffs canceling these tariffs and withdrawing the privilege of precooling altogether. Upon protest from interested shippers the Commission suspended the tariffs canceling the precooling privilege: Held, That shippers have the right to precool; that $7.50 per car is a reasonable charge to be made by the carriers for their service in that connection; that the tariffs withdrawing this charge are unlawful; and that the present tariffs or their equivalent should be continued in effect.

Asa F. Call and Cassoday, Butler, Lamb & Foster for Arlington Heights Fruit Exchange and others.

Robert Dunlap, T. J. Norton, F. C. Dillard, Gardiner Lathrop, and W. F. Herrin, for defendants.

84 *Report of the Commission.*

PROUTY, *Chairman:*

In Arlington Heights Fruit Exchange v. So. Pac. Co., 20 I. C. C., 106, the Commission reduced the charge of the defendants for precooling from $30 to $7.50 per car. Proceedings were begun by the carriers in the Commerce Court to enjoin the enforcement of this order, but that court declined to interfere, holding apparently that inasmuch as the order simply required the reduction of a rate voluntarily established by the carriers, nothing but the amount of the charge was before the court and that the right of shippers to insist upon the privilege of precooling could not be adjudicated in that proceeding.

Thereupon the carriers filed tariffs establishing the rate of $7.50, as ordered by the Commission, but immediately thereafter they filed other tariffs canceling these tariffs and withdrawing the privilege of precooling altogether. Upon protest from interested shippers the Commission suspended the tariffs canceling the precooling privilege by its order in this proceeding, so that the question for our present consideration is, Have the carriers the right to cancel their precooling tariffs and thereby withdraw that privilege entirely?

All the facts bearing upon this subject were presented to the Commission upon the hearing in the former case and are fully stated in the opinion of the Commission, which is referred to and made a part of this present opinion. All parties have waived the right to introduce further testimony and have asked that the matter be disposed of upon the former record.

To what extent the refusal of the defendants to furnish cars for precooling under tariffs which have been regularly established amounts to a violation of the act to regulate commerce,
85 or whether this Commission can deal with such refusal either by an express order requiring the furnishing of cars or by the giving of damages for such failure, are questions which have not been presented in argument and which are not at this time considered.

Neither have we been asked to consider whether the cancellation of these tariffs and the withdrawal of the privilege is such a change in rates as justifies us in suspending the tariffs of cancellation and requiring the maintenance of the rate. Apparently no such question could be successfully raised. If shippers are entitled to precool upon a reasonable charge, then it must follow that this Commission has authority to determine that reasonable charge and require carriers to file tariffs establishing it. The withdrawal of such tariffs when already filed is clearly a change in the rate to the disadvantage of the shipper which this Commission may properly suspend. If the shipper is entitled to this rate, then the Commission upon determining that fact should order the rate to be filed and maintained. How far the carrier may go in declining to furnish equipment, or what the remedy of the shipper may be in case of such refusal, is a different question.

The defendants in their briefs assume that the only subject for consideration now is the single inquiry, Have shippers, the legal right upon proper terms to preice their shipments, as that term is defined in the former opinion? If shippers have that right, then it is apparently conceded that the Commission may by its order require the maintenance of tariffs according it in due form.

86 In its original opinion, at page 115, the Commission said:

When precooling was first tried no additional charge was made by the carriers. After the precooling plants at East Highlands and Pomona had been erected a charge of $30 per car was established; that is, if the shipper precooled and preiced his car and the carrier then transported that car to its destination without icing in transit, the shipper was required to pay $30 per car, which the complainants contend is unreasonable. The defendants now state that this charge was established for experimental purposes; that they deny the legal right of the shipper to precool and preice his fruit and are satisfied that that privilege ought not to be accorded upon any terms. While they have allowed their tariffs to remain in effect pending this proceeding, they express the intention upon its determination of withdrawing the privilege entirely. Two questions are therefore presented for our determination.

1. Has the shipper the legal right to precool and preice his shipments in the manner indicated?

2. What, if any, charge may the carrier reasonably make when the car is so treated?

It will be seen, therefore, that the exact question which we are called to pass upon now was presented in the former case. No new facts are before us. Additional briefs have been filed by both parties, but the arguments now introduced on both sides were urged in the former case and were fully considered by us. We find no reason for reaching a different conclusion now from that formerly announced.

It does not seem profitable at this time to restate in any
87 detail either the facts or the reasons actuating the Commission, since those are fully given in the former opinion, but for the purpose of presenting distinctly the issue involved the claims of the parties and the position of the Commission may be briefly recapitulated.

The carriers insist that precooling, as practiced by these shippers, is essentially a refrigeration service; that this service is by statute made a part of the transportation which they are required to furnish, and that therefore they may and must supply it, and may insist upon their right to do so without interference by the shipper.

The Commission expressed the opinion before the enactment of the statute in its present form that the furnishing of necessary refrigeration for the transportation of fruits and vegetables was a transportation duty devolving upon the carriers, and that while this service was sometimes in part performed by the shipper it should be treated as a part of the transportation for which the carrier should be held responsible. The present statute making refrigeration a part of transportation was enacted at the suggestion of this body. If, therefore, precooling as practiced is refrigeration, as previously defined by this Commission, then we are committed irrevocably to the proposition that it is a part of the transportation service and that carriers may and should ordinarily perform that service without recourse to the shipper; certainly they may insist upon performing the service exclusively. If the rate charged is unreasonable then that charge, like any other for a transportation service, may be reduced upon application to this body.

We are, however, of the opinion that the thing done in this case
88 is not refrigeration as ordinarily understood and as previously considered by us, and not a part of the transportation service which these carriers render. The reason for this conclusion is found in the character of the service itself.

Under ordinary refrigeration oranges are placed in the car with spaces between the tiers so as to admit of the free circulation of air. The ice bunkers in the ends of the car are filled with ice, sometimes before the car is loaded but usually not until after the fruit has been put in position, and the ice bunkers are opened and replenished from time to time as the car proceeds on its journey. It is the duty of the carriers to see that the bunkers are properly provided with ice and that the vents of the car are properly closed or opened.

Precooling as practiced by these shippers is entirely different from the refrigeration above described. Under this method the fruit is brought from the orchard to the packing house and is at once packed and placed in a cold room where the heat is gradually extracted. Shippers insist that the essential feature of precooling or preicing as practiced by them is that the fruit be at once placed under refrigeration, that the heat be gradually and thoroughly extracted from the fruit without subjecting it at any time to an abnormally low temperature, and that when cooled it should be kept at that temperature until loaded. When the car is to be loaded it is brought to the packing house, connected with the cooling room, and thoroughly cooled itself. The oranges are now packed into the car, not with spaces between the boxes but in a solid mass, which incidentally permits of increasing the load of fruit from five tiers to six. The bunkers are filled with ice, large cakes especially prepared for the purpose being used and great care being taken to see that the bunkers
89 are thoroughly filled. After all this has been done the car is sealed up and hauled through to its destination without opening the bunkers and without unsealing the car.

In our opinion there is nothing connected with this operation which is or properly could be a part of the transportation service. Certainly that can not be a transportation service which the carrier in the nature of things can not perform, and there is no essential element in the successful use of preicing which must not be performed by the shipper and which could be properly or advantageously performed by the carrier.

The carrier might furnish the ice with which the bunkers are filled, but it could only do so at a disadvantage and if compelled to furnish this ice in proper shape and at a price which would be reasonable as compared with the cost of the ice to the shipper at that point, would not care to do so. If the carrier were allowed to furnish the ice, it could not properly fill the bunkers and seal the car for transportation, since this would require the services of an expert at each separate packing house, nor ought it to be permitted or required to do this inasmuch as the shipper must assume the responsibility of the work having been properly performed.

The only service required of the carrier is to provide the car, set it at the packing house, and when loaded haul that car within a reasonable time to its destination and there make delivery in the same condition in which it was received. The mere fact that ice is used in connection with this shipment no more makes the process of precooling a transportation service than as though ice
90 were placed in the receptacle containing the article to be shipped and not in the bunker of the car. Fish and poultry are very often shipped in barrels filled with ice, but it will not be claimed that for this reason the carrier has the right to furnish the ice which is placed in the package nor to decline to receive the package because it does contain this ice.

But while in our opinion the process of precooling as above defined is not a transportation service, since it is performed by the shipper and can not be performed by the carrier, it does neverthe-

less take the place of refrigeration, and if these defendants had provided and were prepared to furnish refrigeration which would answer the same purpose as precooling at substantially the same price then it might perhaps be held that the shipper should avail himself of the refrigeration which the carrier was prepared to furnish; but that situation is not here presented. This record shows that the cost to the shipper of refrigeration when furnished by the railroad in any one of the several forms offered is upon the average from $30 to $35 a car greater than the cost of precooling. The complainants urge that they have the legal right to precool and that this right can not be denied them by this Commission. Without expressing any opinion upon that proposition, we are clear that until the carriers offer a substitute for precooling which is fairly its equivalent in cost and in efficiency, it is the right of the shipper to avail himself of this privilege. As stated in our former opinion, the difference in expense applied to all the carloads of citrus fruits which are now refrigerated in transit would equal $600,000 per year. It is a singular proposition that this enormous waste must continue indefinitely and increasingly because these carriers have made
91 an investment the value of which will be impaired if the privilege to precool be accorded.

We are of the opinion that shippers have the right to precool; that $7.50 per car is a reasonable charge to be made by the carriers for their service, as stated in the former opinion in that connection; that the tariffs withdrawing this charge are unlawful; and that the present tariffs or their equivalent should be continued in effect, and it will be so ordered.

92 EXHIBIT M.

Order.

At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 8th Day of April, A. D. 1912.

Investigation and Suspension Docket Nos. 50, 50-C, and 50-F.

In the Matter of the Investigation and Suspension of Certain Regulations and Practices with Regard to Precooling and Preicing.

It appearing, That the Commission had entered upon an investigation concerning the lawfulness of certain tariffs of the carriers defendants herein whereby they cancelled prior tariffs containing the charge of $7.50 per car for precooling oranges transported in carloads from shipping and producing points in southern California to points in other states of the United States designated in Transcontinental Freight Bureau East-Bound tariffs No. 3-I, I. C. C., No. 926, effective October 10, 1910, and No. 7-C, I. C. C., No. 921, effective April 18, 1910;

It further appearing, That the Commission ordered that the operation of the following schedules so far as they cancelled such charge for precooling be suspended until April 28, 1912; to wit: Southern Pacific Company, supplement No. 3 to I. C. C. No. 3318, Joint Refrigeration tariff No. 359-C, effective July 1, 1911; San Pedro, Los Angeles & Salt Lake Railroad Company, supplement No. 7 to I. C. C. No. 325, effective July 29, 1911; and "Santa Fe Sys-
93 tem" tariff No. 8123-F, I. C. C. No. 5864, effective February 10, 1912; the last-named tariff being under suspension until June 1, 1912.

It further appearing, That a full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That said defendants be, and they are hereby, notified and required, on or before the 20th day of May, 1912, to cancel the said tariffs and supplements above-named so far as they abrogate such charge for precooling.

It is further ordered, That the carriers parties to the above-named tariffs and supplements, herein involved, shall continue in effect, and maintain in force for a period of two years from the date hereof, a charge for precooling oranges transported in carloads from shipping and producing points in southern California to points in other states of the United States as designated in above-described tariffs, which shall not exceed $7.50 per car.

By the Commission.

[SEAL.] JOHN H. MARBLE, *Secretary.*

94 In the United States Commerce Court.

No. 41.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Southern Pacific Company, and San Pedro, Los Angeles and Salt Lake Railroad Company, Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission and Arlington Heights Fruit Exchange et al., Intervenors.

Precooling and Preicing Citrus Fruits.

Motion for Leave to File Amended and Supplemental Petition.

(Filed June 4, 1912.)

Come now the petitioners in the above entitled cause and move this honorable court that they be permitted to file a joint amended and supplemental petition herein, which said petition is a combina-

tion of the original and supplemental petitions heretofore filed in this cause, and which is to be filed for the purpose of presenting the case in a succinct and concrete way.

A. B. BROWN,
ALEX. BRITTON,
EVANS BROWN,
On Behalf of Counsel for Petitioners.

95 In the United States Commerce Court.

No. 41.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, Southern Pacific Company, and San Pedro, Los Angeles and Salt Lake Railroad Company, Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION and Arlington Heights Fruit Exchange et al., Intervenors.

Precooling and Preicing Citrus Fruits.

Order.

(Entered June 4, 1912.)

Upon motion of counsel for petitioners made in that behalf, it is, this 4th day of June, 1912.

Ordered, That the petitioners have leave to file forthwith a joint amended and supplemental petition, as set forth in said motion, and that the respondent and intervenors shall make answer or plead thereto on or before the thirtieth day after the filing of the said joint amended and supplemental petition.

MARTIN A. KNAPP,
Presiding Judge.

96 In the United States Commerce Court.

No. 41.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al., Plaintiffs,

vs.

THE UNITED STATES OF AMERICA, Defendant.

Petition of Intervention.

(Filed May 13, 1911.)

To the Honorable Judges of the United States Commerce Court

Your petitioners, the Arlington Heights Fruit Company, Arlington Heights Fruit Exchange, Azusa-Covina-Glendora Fruit Ex-

change, Glendora Citrus Association, Associated Fruit Exchange, Highgrove Fruit Exchange, Duarte Monrovia Fruit Exchange, Ontario-Cucamonga Fruit Exchange, Lemon Growers' Exchange, West Ontario Citrus Association, Stewart Citrus Association, Mountain View Orange and Lemon Growers' Association, Cucamonga Lemon Association, Queen Colony Fruit Exchange, Corona Citrus Association, Orange Heights Fruit Association, W. H. Jameson, Redlands-Highlands Fruit Exchange, Redlands Fruit Association, Riverside Fruit Exchange, California Fruit Growers' Exchange, E. B. Leach, La Mesa Packing Company, San Antonio Fruit Exchange, Pomona Fruit Growers' Exchange, Indian Hill Citrus Association, San Dimas Lemon Association, San Bernardino County Fruit Exchange, Colton Fruit Exchange, Rialto Orange and Lemon Association, West Highlands Citrus Association, Semi-Tropic Fruit Exchange, C. W.
97 Leffingwell, Junior, Johnston Fruit Company, Fernando Fruit Growers' Association, Sunset Fruit Exchange, Santiago Fruit Growers' Association, David Hewes, Tulare County Citrus Fruit Exchange, Porterville Citrus Association, Zante Citrus Association, Lemon Cove Association, Fillmore Citrus Fruit Association, Santa Paula Citrus Fruit Association, Escondido Fruit Growers' Association, E. J. Loveless and R. D. Loveless, co-partners doing business under the firm name of Loveless Fruit Company, Fred F. Keen and Alice B. Keen, co-partners, doing business under the firm name of Keen and Company, G. A. Hanson and C. E. Sears, co-partners, doing business under the firm name of Hanson and Sears, Nathan W. Blanchard, Colton Orange Growers' Association, East Highlands Citrus Association, J. P. Triola, Limoneira Company, Highland Fruit Growers' Association, Mutual Orange Distributors, National Orange Company, Citrus Fruit Association, of Ontario, Randolph Fruit Company, Redlands Orange Growers' Association, by their attorneys, A. F. Call and Cassoday, Butler, Lamb & Foster respectfully represent that each of the companies, associations and exchanges above named is a corporation and duly organized and doing business under and by virtue of the laws of the State of California, having its principal place of business in the State of California, and that each corporation and each individual petitioner above named is now and has been for several years last past engaged in the business of growing, producing and shipping oranges and lemons produced in California and in selling and marketing the same throughout the United States, in very large part at points east of the Rocky Mountains.

That these petitioners were all complainants in the action or proceeding before the Interstate Commerce Commission entitled the Arlington Heights Fruit Company, et al. versus the Southern Pacific Company, et al. numbered 3,000 on the docket of the Commission, and that complainants' bill herein is based upon the order of the Interstate Commerce Commission made and entered
98 in said case numbered 3,000 hereinbefore referred to, on or about the 14th day of January, 1911; that the said petitioners and each and all of them are interested in said suit and order, a copy

of which said order and the Commission's report therein is attached to complainants' bill of complaint in this case.

Wherefore, your petitioners and each of them pray that they and each of them be made parties to said suit and be allowed to file answer as provided by law, and to be entitled to notice of all proceedings pertaining thereto in the same manner and to the same extent as though named as such parties at the time the bill of complaint was filed herein; the said notices aforesaid to be sent to William E. Lamb, 1414 Monadnock Block, Chicago, Illinois, and to A. F. Call, Consolidated Realty Building, Los Angeles, California; one notice to each of the persons last named will be deemed notice to all of the petitioners.

A. F. CALL AND
CASSODAY, BUTLER, LAMB & FOSTER,
Attorneys for Interveners.

WILLIAM E. LAMB,
Of Counsel.

99 STATE OF ILLINOIS,
County of Cook, ss:

William E. Lamb, being first duly sworn, deposes and says that he is one of the attorneys for the interveners above named; that he knows the facts stated in said petition of intervention and that the same are true.

WILLIAM E. LAMB.

Subscribed in my presence and sworn to before me by the said William E. Lamb, this 11th day of May, 1911.

[SEAL.] D. V. RUBIDGE,
Notary Public.

100 In the United States Commerce Court.

No. 41.

ATCHISON, TOPEKA & SANTA FE RY. CO. et al., Petitioners,
vs.
THE UNITED STATES OF AMERICA, Respondent.

Order.

(Entered May 17, 1911.)

On motion of the Arlington Heights Fruit Company and the other companies, associations and exchanges named in a certain petition of intervention filed in writing on May 13, 1911, made in open Court by William E. Lamb, their solicitor, due notice having been given in that behalf, that they be allowed to intervene and become parties to the above-entitled proceeding:—

It is ordered, that the said Arlington Heights Fruit Company and

the other companies, associations and exchanges named in the said petition of intervention filed in writing on May 13, 1911, be and they are hereby allowed to intervene in and become parties to the above-entitled cause and be represented by their counsel.

By the court:

MARTIN A. KNAPP,
Presiding Judge.

101 In the United States Commerce Court.

In Equity, No. 41.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, and SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY, Petitioners,

v.

THE UNITED STATES OF AMERICA et al., Respondents.

Answer of the Interstate Commerce Commission.

(Filed May 24, 1911.)

The Interstate Commerce Commission, one of the parties respondent in the above-entitled cause, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' petition contained, for answer thereunto, or unto so much or such parts thereof as this respondent is advised is material for it to make answer unto, answers and says:

I-VII.

Answering paragraphs 1 to 7, inclusive, of the petition:

This respondent admits that the allegations contained in said paragraphs are true.

102 VIII.

Answering paragraph 8 of the petition:

Respondent admits that the allegations contained in said paragraph are true, except that respondent denies that the permission therein referred to accorded to shippers by petitioners was or is a matter of grace on the part of petitioners, and except that respondent denies that as a result of icing done by said shippers under such permission the cars of petitioners were damaged to a greater extent than they would have been had such icing been done instead by the agents or employees of petitioners.

IX-XI.

Answering paragraphs 9 to 11, inclusive, of the petition:

Respondent admits that all the allegations contained in said paragraphs are true.

XII.

Answering paragraph 12 of the petition:

Respondent admits that in the report referred to respondent held that shippers of oranges from southern California had the lawful and legal right to preice the cars of the carriers used in transporting such oranges to points in the United States, but respondent denies that such holding was or is erroneous and denies that the right referred to was not put in issue in the proceeding before respondent to which said report relates.

103

XIII.

Answering paragraph 13 of the petition:

Respondent admits that the allegations contained in said paragraph are true.

XIV.

Answering paragraph 14 of the petition:

Respondent alleges that petitioners did not, either on May 3, 1911, or at any other time, cancel the rule set forth by them in paragraph 7 of the petition, nor did they then so amend their tariffs as to provide that from and after June 10, 1911, the privilege covered by said rule would be withdrawn from shippers, except that on May 2, 1911, said petitioner, The Atchison, Topeka & Santa Fe Railway Company filed in the office of respondent supplement 4 to Santa Fe System Tariff No. 8123-D, I. C. C. No. 5288, effective June 10, 1911, wherein and whereby it is provided as follows:

(A) The privilege heretofore permitted to shippers of citrus fruit to preice carload shipments is withdrawn, the carriers retaining and exercising the exclusive right and control of furnishing and doing all icing and refrigeration of citrus fruit in all cases where shipper does not specifically request or direct shipments to move solely under ventilation.

(B) On all carloads of citrus fruit precooled and preiced or preiced by carrier, and which will be forwarded through to destination under instructions from shipper, "Do not re-ice en route," a charge of $55 per car of 32,000 lbs. or less will be made, excess
104 weight to be charged for at 17.187 cents per 100 lbs. On all cars handled under this rule, shipper will be required to sign the following release, which must in all cases appear on shipping ticket and bill of lading and be copied on waybill by agent:

"The giving and acceptance of these special instructions from the shipper releases the initial carrier and its connections from all liability for damage caused by nonicing in transit or at destination."

In event any such car is re-iced in transit, the above charge of $55.00 per car will be cancelled and the regular refrigeration rate applicable from Los Angeles or San Bernardino, Cal., to final destination, as shown in this tariff, will apply and must be added to the waybill for collection in the usual manner.

(C) On all carloads of citrus fruit which on request of shippers are precooled by carrier and moved to destination without ice, a

charge of $25 per car of 32,000 lbs. or less for precooling will be assessed, excess weight to be charged for at $.07812 per 100 lbs. In event any such car is placed under ice in transit, the above charge of $25.00 will be cancelled and regular refrigeration rate applicable from San Bernardino or Los Angeles, Cal., to final destination, as shown in this tariff, will apply and must be added to the waybill for collection in the usual manner.

In this connection respondent further alleges that the privilege referred to is the right of shippers to precool and preice cars
105 containing oranges shipped from points of origin in southern California to points of destination in other States and Territories of the United States, and that such privilege does not depend upon the will of petitioners but is inherent in said shippers, and that any attempt on the part of petitioners to do away with such right must therefore end in failure.

XV.

Answering paragraph 15 of the petition:

Respondent denies that the order referred to in said paragraph is either unjust or unreasonable. On the contrary, respondent alleges that said order is just, reasonable, and lawful.

XVI.

Answering paragraph 16 of the petition:

Respondent alleges that the charge of $7.50 per car, referred to in said paragraph, affords just and reasonable compensation to petitioners for the services performed by them to which said charge relates; that said charge affords adequate and just compensation to petitioners upon the basis described in the report of the commission referred to in said paragraph, and that said charge is sufficient to pay in each instance the cost of said services and a reasonable profit to the carriers who perform such services; and respondent denies that under the findings of respondent contained in said report, the amount allowed the carriers is less than the cost to them of performing the services referred to.

106 XVII.

Answering paragraph 17 of the petition:

Respondent admits that the order referred to is made operative by its terms for a period of two years, and denies that the period of time said order can remain in force depends either entirely or at all upon the will of petitioners concerning the precooling and preicing of shipments of oranges as aforesaid by the shippers thereof.

XVIII.

Answering paragraph 18 of the petition:

Respondent is informed and believes, and thereupon alleges, that in fixing the aforesaid charge of $7.50 per car respondent considered the expense incurred by carriers in providing and having on

hand at all times at various points a supply of ice sufficient to meet the necessities of refrigeration and also considered the distances over which said ice is and must be hauled by the carriers which transport it, and all other facts, circumstances, and conditions which pertain to or affect in any way the transportation and services of the carriers hereinbefore referred to. Respondent denies that, where shippers instruct the carriers not to re-ice said shipments of oranges in transit, it will either frequently or ever occur that on account of delays in transportation not due to either the fault or negligence of the carriers re-icing will become necessary before said shipments are delivered at destination.

107 XIX.

Answering paragraph 19 of the petition:

Respondent admits that there will be a large number of shipments of oranges from southern California after the effective date of said order, but denies that if the carriers are required to observe such order and to put into effect the aforesaid charge of $7.50 per car they will be deprived of either a large amount of earnings or of any earnings to which they are entitled, or suffer either great or any irreparable loss or damage.

Respondent denies the truth of each of and all allegations contained in said petition, except to the extent that the truth of said allegations is admitted in the answers thereto hereinabove made by respondent.

Respondent further alleges that all the allegations contained in said petition relate to matters within the jurisdiction of this respondent under the act to regulate commerce, and are covered by the aforesaid report and order of respondent; that the findings of fact made by respondent and contained in said report and order relate only to matters within said jurisdiction, and that therefore the correctness of said findings of fact is a matter which is not open to review either in this or in any other court.

All of which matters and things the respondent is ready to aver, maintain, and prove as this honorable court shall direct, and
108 thereby prays to be hence dismissed, with its reasonable costs and charges in that behalf sustained.

THE INTERSTATE COMMERCE COMMISSION,
By P. J. FARRELL, *Its Solicitor.*

WASHINGTON,
District of Columbia, ss:

I, Judson C. Clements, a member and chairman of the Interstate Commerce Commission, having read the foregoing answer and knowing the contents thereof, hereby make oath that the matters of fact therein stated are true to the best of my knowledge, information, and belief.

JUDSON C. CLEMENTS,
Member and Chairman of the Interstate Commerce Commission.

Subscribed and sworn to before me, H. S. Milstead, a notary public in and for said District of Columbia, this the 24th day of May, 1911.

[L. S.] [SEAL.]

H. S. MILSTEAD,
Notary Public.

109 In the United States Commerce Court.

Equity. No. 41.

THE ATCHISON, TOPEKA & SANTA FE RY. CO., SOUTHERN PACIFIC CO., and San Pedro, Los Angeles & Salt Lake Railway Co., Petitioners.

vs.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Intervenors.

Answer of the Arlington Heights Fruit Company and Others, Intervenors.

[Filed May 25, 1911.]

The Arlington Heights Fruit Company and other parties named as intervenors in the intervening petition heretofore filed herein and allowed, and by leave of court first obtained, to make answer herein, now and at all times hereafter saving and reserving to themselves and each of them all and all manner of benefit and advantage of exception to the many errors and imperfections in the petitioners' petition contained, for answer thereunto or unto so much or to such parts thereof as these intervenors are advised that it is material for them to make answer unto, answer and say:

110

I.

Answering paragraphs 1 to 6, inclusive, of the petition:

These intervenors admit that the allegations contained in said paragraphs are true.

II.

Answering paragraph 7 of the petition:

Intervenors admit that petitioners have generally supplied icing necessary for refrigeration on shipments of citrus fruits, but deny that said petitioners have at all times furnished icing and refrigeration for shipments made by intervenors; intervenors admit that petitioners have provided a separate charge for the refrigeration provided by said carriers, and that such charges have been published and filed in the Interstate Commerce Commission.

III.

Answering paragraph 8 of the petition:

Intervenors admit the allegations contained in said paragraph

are true, except that intervenors deny that the privilege of
111 precooling and preicing contained in the tariff provision referred to in said paragraph was or is a matter of grace on the part of petitioners and except that intervenors deny that as a result of the icing done by said shippers under such privilege the cars of petitioners were damaged to a greater extent than they would have been had such icing been done instead by the agents or employees of petitioners.

IV.

Answering paragraphs 9 and 10 of the petition:
Intervenors admit that the allegations contained in said paragraphs are true.

V.

Answering paragraph 11 of the petition:
Intervenors admit that after the hearing upon the complaint referred to in the petition the Interstate Commerce Commission was of the opinion that the precooling charge of $30 per car hereinbefore referred to was unjust and unreasonable, and that it determined and prescribed that a charge of $7.50 per car, upon oranges precooled and preiced by shippers, transported from shipping and producing points to points in other States as named in said paragraph of petition, would be the just and reasonable charge to be thereafter observed in the future as a maximum; admit that the effective
112 date of the order of said Commission was subsequently extended to May 5, 1911.

VI.

Answering paragraph 12 of the petition:
Intervenors admit that in the report referred to in the petition herein the respondent Interstate Commerce Commission held that shippers of oranges from Southern California had the lawful and legal right to precool and preice their shipments and to preice the cars of carriers used in transporting such oranges to points in the United States, but intervenors deny that such holding was or is erroneous and denies that the right referred to was not put in issue in the proceeding before the Interstate Commerce Commission to which said report relates, but on the contrary allege that said question was in issue in the proceedings before said Commission.

VII.

Answering paragraph 13 of the petition:
Intervenors admit that the allegations contained in said paragraph are true.

VIII.

Answering paragraph 14 of the petition:
Intervenors allege that they are not advised as to the true reason

which prompted the Atchison, Topeka & Santa Fe Railway
113 to attempt to cancel the tariff provision hereinafter referred to by intervenors, but deny that said attempt was in view of the responsibility of petitioners or because said petitioners or any of them found that the privilege of preicing cars of the carriers had been abused by the shippers in placing block ice instead of broken ice in the bunkers, or because 3,600 pounds more ice was placed in the bunkers than the carriers found necessary for refrigeration, or that such excess weight made an addition to the dead haul, and intervenors further deny that the attempted cancellation of tariff by the Atchison, Topeka & Santa Fe Railway was because it or the other petitioners deemed that the said privilege resulted in discrimination against shippers not having facilities for preicing who relied on the carriers to furnish refrigeration; and intervenors deny that the attempted cancellation was because of demand of shippers in general that carriers perform their legal obligations and provide refrigeration and ice to all alike; but intervenors allege that on or about May 2 the said petitioner, Atchison, Topeka & Santa Fe Railway Co., filed in the office of the Interstate Commerce Commission its supplement No. 4 to Santa Fe System Tariff No. 8123-D, I. C. C. No. 5288, effective June 10, 1911, wherein and whereby it is provided as follows:

(A) The privilege heretofore permitted to shippers of citrus fruits to preice carload shipments is withdrawn, the carriers retain-
114 ing and exercising the exclusive right and control of furnishing and doing all icing and refrigeration of citrus fruit in all cases where shipper does not specifically request or direct shipments to move solely under ventilation.

(B) On all carloads of citrus fruit precooled and preiced or preiced by carrier, and which will be forwarded through to destination under instructions from shipper, "Do not reice en route," a charge of $55.00 per car of 32,000 pounds or less will be made, excess weight to be charged for at 17.187 cents per 100 pounds. On all cars handled under this rule shipper will be required to sign the following release, which must in all cases appear on shipping ticket and bill of lading and be copied on way-bill by agent:

"The giving and acceptance of these special instructions from the shipper releases the initial carrier and its connections from all liability for damage caused by nonicing in transit or at destination."

In event any such car is reiced in transit, the above charge of $55.00 per car will be cancelled and the regular refrigeration rate applicable from Los Angeles or San Bernardino, Cal., to final destination, as shown in this tariff, will apply and must be added to the way-bill for collection in the usual manner.

115 (C) On all carloads of citrus fruit which on request of shippers are precooled by carrier and moved to destination without ice, a charge of $25.00 per car of 32,000 — or less for precooling will be assessed, excess weight to be charged for at $.07812 per 100 pounds. In event any such car is placed under ice in transit, the above charge of $25.00 will be cancelled and regular refrigeration rate applicable from San Bernardino or Los Angeles,

Cal., to final destination, as shown in this tariff, will apply and must be added to the way-bill for collection in the usual manner.

And intervenors further allege that on May 22, 1911, the petitioner, the Southern Pacific Company, filed its Supplement No. 3 to Southern Pacific Tariff I. C. C. No. 3318, effective July 1, 1911, in which it attempts to cancel its former precooling and preicing privilege; and intervenors allege that said attempted cancellation of the tariff hereinbefore referred to by the petitioners named is in violation of the terms of the Commission's order complained of herein, and was so known to be by the said petitioners at the time the said tariffs were filed, and was made by them with the intent to disregard and disobey the order of the Interstate Commerce Commission.

Further answering paragraph 14 of the petition:

These intervenors allege that the allegations of said paragraph relating to the alleged reasons which caused the petitioners to
116 attempt to withdraw the precooling and preicing privilege are wholly irrelevant and immaterial and an attempt to raise an issue that cannot properly be tried in this court.

IX.

Answering paragraph 15 of petition:

Intervenors deny that the order referred to in said paragraph is either unjust or unreasonable, but, on the contrary, intervenors allege that said order is a lawful order and one made by the Interstate Commerce Commission in the lawful exercise of the powers conferred upon it by the Act to Regulate Commerce, and that said order was made only after the Interstate Commerce Commission had fully complied with the provisions of the Act to Regulate Commerce in relation to the making of said order.

X.

Answering paragraph 16 of the petition:

Intervenors deny each and every allegation contained in said paragraph, and allege that the charge of $7.50 per car prescribed by said Commission affords just and reasonable compensation to the petitioners for the services rendered by them to which said charge relates; and intervenors allege that said charge affords adequate and just compensation upon the basis prescribed in the report of
117 the Commission and referred to in said paragraph; intervenors further allege that said charge is sufficient to pay to the carriers in each instance the cost of the service rendered by them and a reasonable profit to the carriers who perform such services, and intervenors allege that under the findings of the Interstate Commerce Commission contained in said report that the amount allowed the carriers is not less than the cost to them of performing the services referred to, but, on the contrary, that the said amount so allowed allows full and fair compensation for the services rendered, including a reasonable profit above the cost of such services.

XI.

Answering paragraph 17 of the petition:

Intervenors admit that the order referred to is made operative by its terms for a period of two years from the effective date thereof; and intervenors deny that the period of time that said order can or will remain in force depends entirely or at all upon the will of the petitioners concerning the precooling and preicing of oranges as aforesaid by the shippers thereof, but, on the contrary, allege that said order can be suspended only by the Interstate Commerce Commission or enjoined by the court in the event that the court finds that the Commission exceeded its powers in making said order.

118 XII.

Answering paragraph 18 of the petition:

Intervenors deny each and every allegation therein contained, and allege that after full hearing on complaint and after full consideration of all facts involved *on* the proceeding before it that the said Interstate Commerce Commission was of the opinion that petitioners' charge of $30 per car for cars precooled and preiced by shippers was unjust and unreasonable for the services performed in connection therewith, and being of that opinion it determined and prescribed that a charge of $7.50 per car would be the just and reasonable charge to be thereafter observed as the maximum.

XIII.

Answering paragraph 19 of the petition:

Intervenors admit that there will be a large amount of shipment of oranges from Southern California after the effective date of said order, but deny that if the carriers are required to observe such order, and to put into effect the charge of $7.50 per car, they will be deprived of either a large amount of earnings or of any earnings to which they will be entitled or that they will either suffer great or any irreparable damage, but, on the contrary, the intervenors allege that if the petitioners observe said order their revenues per car
119 will be greater than are now received by the said carriers per car under the provisions of their present tariffs.

XIV.

Further answering said petition:

Intervenors allege that they as complainants filed complaint in writing with the Interstate Commerce Commission against the petitioners herein, which complaint was entitled "Arlington Heights Fruit Exchange et al., complainants, vs. Southern Pacific Co., as defendants," and was numbered 3,000 on the docket of the Commission; that said complaint charged and alleged that the petitioners' precooling and preicing charge of $30 per car on oranges precooled or preiced by the shipper was unjust and unreasonable for the services rendered by said petitioners for which the charge was made; that a copy of said complaint was served by the respondent

Interstate Commerce Commission upon each and every defendant named in said complaint, among which were the petitioners herein named; and the said respondent Interstate Commerce Commission called upon the said defendants to satisfy said complaint or to answer the same in writing in twenty days; that thereafter said defendants, among which were the petitioners herein, filed their answers in writing with the respondent the Interstate Com-
120 merce Commission; that upon the joining of the issues in said case the same was duly assigned for hearing by the Mission and all parties thereto were duly advised by due and timely notice in writing of the time and place of said hearing that pursuant to said notice parties appealed and offered their respective proofs, and that thereafter the several parties filed their written briefs and oral argument was heard in the case; that following oral argument said case was by the respective parties duly submitted to the Commission for its determination, and after giving full consideration to all the facts and circumstances connected with the questions involved the Commission was of the opinion that the precooling and preicing charge exacted by the defendants named in the complaint before the Commission, among which were the complaints herein referred to, of $30 per car on cars of oranges precooled or preiced by the shippers transported between the points covered by the complaint, was unjust and unreasonable for the services performed by the said defendants in said complaint, among which were the petitioners herein named; that said Commission being of the opinion that said rate of $30 per car was unjust and unreasonable for the services performed or for the privilege allowed, it became the duty of the respondent Commission to determine and prescribe what would be the just and reasonable rate for the said
121 defendants named in said complaint to thereafter observe as a maximum, and in the performance of said duty the said Commission determined and prescribed that the rate of $7.50 per car would be the just and reasonable charge to be thereafter observed by said carriers as a maximum for a period of two years from the effective date of the Commission's order, upon condition that the said defendants, among which were the petitioners herein, could require that such cars be loaded with boxes of oranges 7 tiers high and 2 tiers wide, and to provide by their tariff a proper minimum carload rate to accomplish said result; intervenors further allege that all the allegations contained in said petition relate to matters within the jurisdiction of the respondent Interstate Commerce Commission under the Act to Regulate Commerce, and are covered by the aforesaid report and order of the aforesaid respondent Interstate Commerce Commission; that the findings of fact made by respondent Interstate Commerce Commission and contained in said report and order relate only to matters within its jurisdiction, and that the correctness of said findings of fact are not open to judicial review. Intervenors further deny the truth of and every allegation contained in said petition, except such as have been herein specifically admitted, modified, or explained.

All of which matters and things the intervenors are ready to

aver, maintain, and prove as this honorable court shall direct,
122 and the intervenors pray that the complaint herein be dismissed and that the intervenors may be allowed their reasonable costs.

A. F. CALL,
CASSODAY, BUTLER, LAMB & FOSTER,
Attorneys for Intervenors.

WILLIAM E. LAMB,
Of Counsel.

WASHINGTON CITY,
District of Columbia, ss:

I, William E. Lamb, being first duly sworn, depose and say that I am a member of the firm of Cassoday, Butler, Lamb & Foster, attorneys for the intervenors herein; that I have read the foregoing answers of the intervenors and know the contents thereof and that the facts therein stated are true.

WILLIAM E. LAMB.

Subscribed in my presence and sworn to before me by the said William E. Lamb this 25th day of May, 1911.

G. F. SNYDER,
Clerk of Commerce Court.

Endorsed: Filed United States Commerce Court, May 25, 1911. G. F. Snyder, Clerk.

123 *Per Curiam Opinion.*

Filed May 29, 1911.

In the United States Commerce Court.

No. 41.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al.,
Petitioners,
vs.
THE UNITED STATES, Respondent.

PER CURIAM: Construing the order of the Commission in this case as fixing the maximum charge of the carrier when the pre-icing is done by the shipper and not as requiring the carrier to permit of pre-icing by the shipper, we are constrained to deny the motion for a temporary injunction and an order to that effect will be therefore entered.

124 In the United States Commerce Court.

No. 41.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al., Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent.

Order Denying Motion for Temporary Injunction.

(Entered May 29, 1911.)

This cause coming on to be heard on motion by the petitioners for a preliminary injunction suspending the order of the Interstate Commerce Commission set forth in the petition, and the said motion having been argued by counsel—F. C. Dillard and Robert Dunlap for the petitioners, and by P. J. Farrell for the Interstate Commerce Commission, and W. E. Lamb for the Arlington Heights Fruit Company and others, intervening in that behalf, upon due consideration thereof, and of the petition and affidavits of the petitioners, and the answers of the respondents, it is ordered and adjudged that the motion be overruled and a preliminary injunction be and the same is hereby denied.

By the court.

MARTIN A. KNAPP,
Presiding Judge.

125 In the United States Commerce Court.

No. 41.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, SOUTHERN Pacific Company, and San Pedro, Los Angeles & Salt Lake Railroad Company, Petitioners,

v.

THE UNITED STATES OF AMERICA, Respondent.

Answer of the United States.

(Filed June 3, 1911.)

The respondent, The United States, for answer to the petition filed against it in this cause, says:

I-VII. Answering Paragraphs I to VII of the said petition, inclusive, this respondent admits the same.

VIII. Answering Paragraph VIII of the said petition, this respondent denies that the permission or privilege to shippers to pre-ice the cars is and was a matter of experiment or grace on the

part of the said petitioners; but this respondent alleges that the permission or privilege to shippers to pre-ice the cars is and was a matter of right on the part of the said shippers; this respondent denies that as the result of the pre-icing performed by the said shippers under their permission or privilege to pre-ice the cars and their practice thereunder, that the cars or the equipment of
126 the said petitioners sustained greater damage than where the icing is or was wholly done by the agents and employees of the petitioners. As to the allegations contained in Paragraph VIII not herein denied, this respondent admits the same.

IX-XI. Answering Paragraphs IX-XI of the said petition, inclusive, this respondent admits the same.

XII. Answering Paragraph XII of the said petition, this respondent says that the lawful and legal right of shippers of oranges from southern California to pre-ice the cars used by the petitioners in transporting such oranges to said points in the United States was properly put in issue before the Interstate Commerce Commission and that the latter in sustaining such right correctly held on the same.

XIII. Answering Paragraph XIII of the said petition, this respondent admits the same.

XIV. Answering Paragraph XIV of the said petition, this respondent denies that the petitioners, on May 3, 1911, or at any other time, cancelled the rule referred to in Paragraph VII of their said petition; nor did they amend their said tariffs as alleged in said Paragraph XIV; but this respondent says that the petitioner, Atchison, Topeka & Santa Fe Railway Company, did, on May 2, 1911, file in the office of the Interstate Commerce Commission, a certain supplement known as Supplement 4 to Santa Fe System Tariff, No. 8123-D, No. 5288, effective June 10, 1911, which provides in words and figures following, viz:

(A) The privilege heretofore permitted to shippers of citrus fruit to preice carload shipments is withdrawn, the carriers retain-
127 ing and exercising the exclusive right and control of furnishing and doing all icing and refrigeration of citrus fruit in all cases where shipper does not specifically request or direct shipments to move solely under ventilation.

(B) On all carloads of citrus fruit precooled and preiced or preiced by carrier, and which will be forwarded through to destination under instructions from shipper, "Do not re-ice en route," a charge of $55 per car of 32,000 lbs. or less will be made, excess weight to be charged for at 17.187 cents per 100 lbs. On all cars handled under this rule, shipper will be required to sign the following release, which must in all cases appear on shipping ticket and bill of lading and be copied on waybill by agent:

"The giving and acceptance of these special instructions from the shipper releases the initial carrier and its connections from all liability for damage caused by nonicing in transit or at destination."

In event any such car is re-iced in transit, the above charge of $55.00 per car will be canceled and the regular refrigeration rate applicable from Los Angeles or San Bernardino, Cal., to final des-

ination, as shown in this tariff, will apply and must be added to the waybill for collection in the usual manner.

(C) On all carloads of citrus fruit which on request of shippers are precooled by carrier and moved to destination without ice, a charge of $25 per car of 32,000 lbs. or less for precooling will
128 be assessed, excess weight to be charged for at $0.07812 per 100 lbs. In event any such car is placed under ice in transit, the above charge of $25.00 will be cancelled and regular refrigeration rate applicable from San Bernardino or Los Angeles, Cal., to final destination, as shown in this tariff, will apply and must be added to the waybill for collection in the usual manner.

And this respondent alleges that the permission or privilege to shippers to pre-ice the said cars is and was a matter of inherent right on the part of said shippers, and any rule or regulation of the petitioners to the contrary was and is in violation of the Act to Regulate Commerce and null and void.

XV. Answering Paragraph XV of the said petition, this respondent denies that the order of the Interstate Commerce Commission is unjust, unreasonable and unlawful.

XVI. Answering Paragraph XVI of the said petition, this respondent denies that under the findings of the Interstate Commerce Commission, contained in its said report, the charge of $7.50 allowed to the petitioners is less than the cost to them of rendering the services performed; and this respondent alleges that the said charge of $7.50 affords just and reasonable compensation to the petitioners on the basis outlined by the Interstate Commerce Commission in its report, for rendering the services performed, and is sufficient in each instance to pay the cost and a reasonable profit to the petitioners for rendering such services.

129 XVII. Answering Paragraph XVII of the petition, this respondent denies that the said order is erroneous and unlawful in that it is made operative for the period of two years; and this respondent denies that the said order may remain in force and effect only at the will of the said petitioners; this respondent alleges that the said order is valid and binding, and must remain in force and effect for two years from the day of the effective date thereof.

XVIII. Answering Paragraph XVIII of the said petition, this respondent alleges that in fixing the said charge of $7.50, and as to all of the matters and things alleged in said Paragraph XVIII, the Interstate Commerce Commission, in its report in writing in respect to the matters and things heard and determined by it which states its conclusion, together with its decision, order, or requirement in the premises, a copy of which is attached to the petition as Exhibit A, to which reference is here made, the matters and things referred to were fully covered, and were within the power of said Interstate Commerce Commission to hear and determine, and its order made and entered is lawful and binding upon the said petitioners in the premises for the full period prescribed by the same.

XIX. Answering Paragraph XIX of the said petition, this respondent assumes there will be a large number of shipments of oranges from southern California after the effective date of said

order as alleged, but as to the other allegations contained
130 in said Paragraph XIX, this respondent denies the same and each and every part thereof.

Further answering the said petition, this respondent denies each and every allegation therein contained not herein specifically admitted or denied.

Further answering said petition, this respondent alleges that all the matters and things contained and alleged in the said petition relate to matters and things within the jurisdiction of the Interstate Commerce Commission to hear and determine under the Act to Regulate Commerce; and that the said Interstate Commerce Commission did fully hear and determine the same; and that the same are embraced within its report and order attached to the petition as Exhibit A; and that the finding of facts made by the said Interstate Commerce Commission in its said report and in its order duly entered thereon are conclusive upon the petitioners in the premises.

And now having fully answered, this respondent prays that the said petition be dismissed at the petitioners' cost, and for such other and further action as may be appropriate.

GEO. W. WICKERSHAM,
Attorney General of the United States.

JAMES A. FOWLER,
Assistant to the Attorney General.
BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

131 In the United States Commerce Court.

No. 41.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, THE Southern Pacific Company, and The San Pedro, Los Angeles & Salt Lake Railroad Company, Petitioners,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION and ARLINGTON HEIGHTS FRUIT EXCHANGE et al.

Order Denying Motion for a Temporary Restraining Order.

(Entered May 17, 1912.)

This day this cause came on for hearing before me, John E. Carland, one of the Judges of the United States Commerce Court, at Washington, D. C., on the motion of the petitioners for a temporary restraining order against the order of the Interstate Commerce Commission, entered on the 14th day of January, 1911, in the case of Arlington Heights Fruit Exchange, et al, and the Southern Pacific Company, et al., Docket No. 3000, and referred to in the petition heretofore filed herein, and the order of the Interstate Commerce Commission entered on the 8th day of April, 1912, and referred to

in the supplemental petition heretofore filed herein, and the same was argued by counsel for all the parties, due notice having been given of the hearing, and submitted to the Court.

Upon consideration whereof, it is now, on this 17th day of May, A. D. 1912, ordered and adjudged by the Court that the said motion for a temporary restraining order be, and the same is hereby, denied, to which order the petitioners duly objected and excepted.

By the court.

JOHN E. CARLAND, *Judge.*

132 In the United States Commerce Court.

No. 41.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, and SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY, Petitioners,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION and ARLINGTON HEIGHTS FRUIT EXCHANGE et al., Intervening Respondents.

Answer of the United States to Supplemental Petition.

(Filed May 24, 1912.)

The respondent, the United States, for answer to the supplemental petition filed herein against it, confirms and adopts its answer filed to the original petition herein, and each and every part of the same, and, further answering, says:

1. It admits the filing of the petition on May 4, 1911, the hearing on the application for a preliminary injunction on May 29, 1911, the opinion filed by the court and the order entered thereon, as alleged.

2. It admits the filing of an amendment to the tariff known as supplement No. 4 to Santa Fe System Tariff, No. 8123-D,
133 I. C. C. No. 5288, and that the said amendment contained the rule lettered "A" and the words and figures referred to as alleged, and that the same was to become effective July 1, 1911.

3. It admits the filing of the amendment to the tariff known as No. 3 to Southern Pacific Local and Joint Refrigeration Tariff, No. 359-C, I. C. C. No. 3318, and that the said tariff contained the words and figures referred to, as alleged.

4. It admits the filing of the amendment to the tariff known as Supplement No. 7 to tariff of San Pedro, Los Angeles & Salt Lake Railroad Company, No. 218-B, I. C. C. No. 325, and that said tariff contained the words and figures referred to as alleged.

5. It admits that the Interstate Commerce Commission entered certain orders suspending the operation and effect of the amendments containing the said rules to the tariffs and that copies of the said orders are attached to the said supplemental petition as exhibits

6. It admits that the Interstate Commerce Commission set said suspension orders for hearing and did, after a full hearing, on April 8, 1912, file its report and enter its order, copies of which are also attached to the said supplemental petition.

7. It denies that any of said orders suspending the said tariffs and rules is erroneous and unlawful and denies that any of them is beyond the power which said commission can constitutionally exercise or beyond the statutory power confided to said commission.

134 8. It denies that the said order of April 8, 1912, is erroneous, unjust, or unreasonable.

9. It denies each and every other matter and thing in the said supplemental petition contained not herein specifically admitted or denied.

Further answering, this respondent alleges that all the matters and things contained and alleged in the said supplemental petition relate to matters and things within the jurisdiction of the Interstate Commission to hear and determine under the act to regulate commerce; and that the said Interstate Commerce Commission did fully hear and determine the same; and that the same are embraced within its reports and orders and that the finding of facts made by the said Intestate Commerce Commission in its said reports and in its orders duly entered thereon are conclusive upon the petitioners in the premises.

And now, having fully answered, this respondent prays that the said petition and the said supplemental petition be dismissed at the petitioners' costs, and for such other and further action as may be appropriate.

WINFRED T. DENISON,
Assistant Attorney General.
BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

135 UNITED STATES OF AMERICA,
District of Columbia, ss:

Blackburn Esterline, being first duly sworn, deposes and says that he is Special Assistant to the Attorney General of the United States, and one of the representatives of the United States in the above-entitled cause; that he makes this affidavit for the United States, being duly authorized in that behalf; that he has read the foregoing answer of the United States to the supplemental petition and that the facts therein stated are true.

BLACKBURN ESTERLINE.

Subscribed and sworn to before me this 24th day of May, A. D. 1912.

[SEAL.]

J. H. MACKEY,
Notary Public, District of Columbia.

136 In the United States Commerce Court, June Session, 1912.

No. 41.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, and San Pedro, Los Angeles & Salt Lake Railroad Company, Petitioners,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Order.

(Entered June 25, 1912.)

On motions of the respective counsel for the United States and the Interstate Commerce Commission in open court made, the counsel for all of the parties being present and consenting thereto,

It is ordered, That the answers of the United States and the Interstate Commerce Commission to the original petition and to the supplemental petition be and the same are hereby made to stand as the answers of the United States and the Interstate Commerce Commission to the amended and supplemental petition.

By the court:

MARTIN A. KNAPP,
Presiding Judge.

137 In the United States Commerce Court.

No. 41.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, and San Pedro, Los Angeles & Salt Lake Railroad Company, Petitioners,

v.

THE UNITED STATES OF AMERICA, Respondent; THE INTERSTATE Commerce Commission and Arlington Heights Fruit Exchange et al., Interveners.

Order.

(Entered February 27, 1913.)

This day this cause came on to be heard and thereupon counsel for the petitioners offered in support of their petition the printed transcript of the evidence taken by the Interstate Commerce Commission in proceeding No. 3000, entitled Arlington Heights Fruit Exchange, et al., v. Southern Pacific Company, et al., which evidence was printed and filed in this court in cause No. 61 entitled The Atchison, Topeka & Santa Fe Railway Company, et al., v. United

States, the same to be filed and treated as a part of the record and proceedings in the above-entitled cause, No. 41.

And thereupon at and when the same was offered, the counsel for the United States, on behalf of the United States, and the counsel for the interveners, Arlington Heights Fruit Exchange, et al., objected to the receipt of the same, or any part of the same, in evidence, upon the following grounds, viz:

1. The same is incompetent, irrelevant and immaterial.

2. The issues made by the parties and to be determined by the court are fully and clearly set out in the pleadings and the evidence now offered is redundant.

138 3. The evidence now sought to be offered is not in support of the allegations of the petition or any of them.

Upon consideration whereof, it is ordered that the foregoing objections and each of them be and the same are hereby overruled, to which ruling of the court the counsel for the respondent and the said interveners severally object and except.

It is further ordered that the said evidence be and the same is hereby admitted and the same shall be treated as a part of the record and proceedings in the above entitled cause, No. 41, to which ruling of the court the counsel for the respondent and the said intervening respondents severally object and except.

By the Court:

MARTIN A. KNAPP,
Presiding Judge.

[Reporter's transcript of testimony, exhibits, etc., printed in separate volume, with index therein.—PRINTER.]

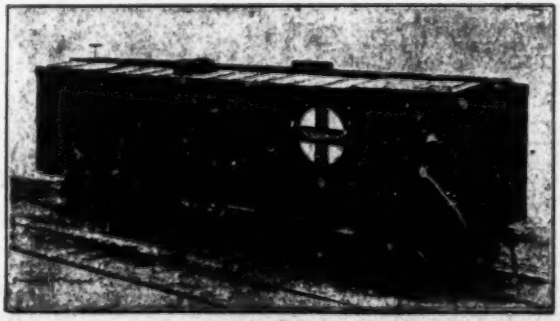
FOR THE GUIDANCE OF EMPLOYES ONLY.

FOR THE GUIDANCE OF EMPLOYES ONLY.

S. F. R. D. CIRCULAR No. 2-D.

(Cancels S. F. R. D. Circular No. 2B-2C.)

The Santa Fe Refrigerator Despatch Co.



RULES AND REGULATIONS

GOVERNING

The Handling of Perishable Freight.

SEE APPLICATION OF RULES, PAGE B.

Defendants' Exhibit 1

EFFECTIVE MAY 15, 1909.

(Subject to Correction Without Notice.)

J. S. LEEDS, Manager,

CHICAGO, ILL.

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THE HENRY O. SHEPARD CO., PRINTERS, CHICAGO. (62749—410)

REFRIGERATION—ICING AND RE-ICING.

Rule No.	REFRIGERATION—ICING AND RE-ICING.
110	**Icing and Re-Icing Bananas.**—Rule No. 110, page 9, S. F. R. D. Circular No. 2-D, shall govern, subject to the following exception: **EXCEPTION.**—Bananas must be iced and re-iced only in acordance with special instructions shown on way-bill, and given by shipper, consignee, or their representative, or by the messenger in charge of car. In the absence of such instructions, wire manager, S. F. R. D. Co., Chicago, Ill.

PROTECTION AGAINST FREEZING.

Rules Nos.	TEMPERATURE AT WHICH PERISHABLE COMMODITIES SHOULD BE PROTECTED AGAINST FREEZING.
200 to 222	Rules Nos. 200 to 222, both inclusive, pages 15 and 16, S. F. R. D. Circular No. 2-D, shall govern, subject to the following exception: **EXCEPTION.**—Refrigerator cars containing lighted stoves will not be moved over Santa Fe System rails.

LESS THAN CARLOADS—SCHEDULED, PICK-UP CARS, ETC.

Rule No.	PROTECTION OF CONTENTS.
257	**Icing and Re-Icing of Less-than-carload Perishable Freight.**—Rule No. 257, page 17, S. F. R. D. Circular No. 2-D: In the absence of special instructions from Manager, S. F. R. D. Co., Chicago, Ill., all scheduled cars must be iced and re-iced to full capacity at all initial, regular and line car icing stations.

TRANSFERRING SHIPMENTS IN TRANSIT.

Rule No.	
330	**Telegraphing Proper Officials.**—Rule No. 330, page 19, S. F. R. D. Circular No. 2-D: Employes in charge, regardless of where transfers may be made, must not fail to wire Manager, S. F. R. D. Co., Chicago, Ill., of all transfers, following Rule No. 325, page 19, Circular 2-D, in detail.

RECORDS OF SERVICE.

Rule No.	
375	**Records of Service.**—Rule No. 375, page 21, S. F. R. D. Circular No. 2-D: **Station Records and Reports.**—Agents of the Santa Fe System will be governed in way-billing and reporting icing charges by Auditing Department's Circulars, A. T. & S. F. Circular 31-B, G. C. & S. F. Circular 76-C, or Coast Line's Circular 123-B, amendments or subsequent issues. **Form 1341, Daily 11 Report, Carload Perishable Freight,** is for permanent station record, and must be carefully made out and preserved by agents at icing stations, inspection stations and junction stations; also by agents at points of origin and destination. Agents of the Santa Fe System at stations where any ice is furnished to refrigerator cars must report all such ice to Manager of S. F. R. D. Co., Chicago, Ill., using Special Form 1371, Daily Ice Report; Standard Form 1188, Weekly Ice Report, and Standard Form 1056, Monthly Ice Report. **Legible tissue copies of way-bills covering all carload perishable shipments must be sent to the Manager of The Santa Fe Refrigerator Despatch Company, Chicago, Ill., on date of shipment. Shipments received from connecting lines, under through way-bills, Santa Fe junction agents will report on Form 1369-Special.**

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FOR THE GUIDANCE OF EMPLOYES ONLY.

Railroad Refrigerator Service Association

CIRCULAR No. 27-A.

(Cancels Circular No. 27.)

THE ATCHISON, TOPEKA & SANTA FE RY. SYSTEM.

CENTRAL OF GEORGIA RY.

CHICAGO, BURLINGTON & QUINCY R. R.
Transportation Dept. Circular No. 114.

CHICAGO, MILWAUKEE & ST. PAUL RY.

CHICAGO, ROCK ISLAND & PACIFIC RY.
Refrigerator Service Circular No. 70.

CHICAGO, ROCK ISLAND & EL PASO RY.

CHICAGO, ROCK ISLAND & GULF RY.
Circular G. F. D. No. 1776-A.

CHICAGO & EASTERN ILLINOIS R. R.
EVANSVILLE & TERRE HAUTE RY.
Circular No. 59.

CHICAGO & NORTH-WESTERN RY.

COLORADO & SOUTHERN RY.
G. F. O. Circular No. 303-A.

DAIRY SHIPPERS DESPATCH,
Circular No. 132; operating via
New York, Chicago & St. Louis R. R.

DENVER & RIO GRANDE R. R.

EL PASO & SOUTHWESTERN SYSTEM.
Circular G. F. O. No. 945-A.

GREAT NORTHERN RY.

ILLINOIS CENTRAL R. R.
Refrigerator Service Circular No. 63.

INDIANAPOLIS SOUTHERN R. R.
Refrigerator Service Circular No. 63.

MISSOURI, KANSAS & TEXAS RY. SYSTEM.
Circular No. 729-A.

MORGAN'S LOUISIANA & TEXAS R. R.
LOUISIANA WESTERN R. R.
IBERIA & VERMILLION R. R.
Circular No. 1105-A.

NEW YORK CENTRAL FAST FREIGHT LINES, Circular No. 2, operating via

Michigan Central R. R.
Circular No. 1720.

Lake Shore & Michigan Southern Ry.

Cleveland, Cincinnati, Chicago & St. Louis Ry.
Circular No. B-406.

Lake Erie & Western Ry.
Circular No. 2265.

NEW YORK DESPATCH REFRIGERATOR LINE, operating via
Grand Trunk Ry.

NORTHERN PACIFIC RY.

OREGON RAILWAY & NAVIGATION CO.
Circular No. G. F. D. 623.

OREGON SHORT LINE.
Circular No. G. F. D. 3113-A

PACIFIC FRUIT EXPRESS CO.
Circular No. 4.

PERE MARQUETTE RAILROAD,
Car Service Dept., Circular No. 224.

RIO GRANDE WESTERN RY.

ST. JOSEPH & GRAND ISLAND RY.
Circular No. R-2.

ST. LOUIS & SAN FRANCISCO R. R.
Circular No. 208-D.
Transportation Dept. Circular No. 9.

SANTA FE REFRIGERATOR DESPATCH CO.
Circular No. 2-D.

SAN PEDRO, LOS ANGELES & SALT LAKE R. R.
Circular No. S. R. L. 176-A.

SOUTHERN PACIFIC CO.
Circular No. G. F. D. 810-A.

SPOKANE INTERNATIONAL RY.

SUNSET-CENTRAL ROUTE:

"Sunset" Lines
Galveston, Harrisburg & San Antonio Ry.
Texas & New Orleans R. R.

"Central" Lines—
Houston & Texas Central R. R.
Houston East & West Texas Ry.
Houston & Shreveport R. R.

Circular No. 32-C.

UNION PACIFIC R. R.
Refrigeration Dept. Circular No. R-16.
Circular No. G. F. O. 982.

THE YAZOO & MISSISSIPPI VALLEY R. R.
Refrigerator Service Circular No. 63.

GENERAL RULES AND REGULATIONS

GOVERNING THE HANDLING OF

PERISHABLE FREIGHT

(Superseding all previous instructions conflicting herewith, and canceling issues enumerated on page 2.)

Issued by the

Railroad Refrigerator Service Association

EFFECTIVE MAY 10, 1909.

(Revised Edition.)

1717

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83129

GENERAL APPLICATION OF RULES

This Circular applies on all perishable freight-traffic, including both local shipments and business delivered to or received from connecting lines, when moving over the rails of the carriers specified on the first page hereof. The instructions herein must be observed by employes of all departments.

EXCEPTIONS, if any, concerning local traffic only, may be covered by separate issues of the individual carriers. (Copies of special issues containing such exceptions are to be filed with the Secretary of the Railroad Refrigerator Service Association.)

ICING CHARGES will be as provided in the published tariffs of individual carriers.

LIST OF PERISHABLE COMMODITIES.

*Ale, Beer and Porter.
Apples.
Berries.
Bacon and Hams.
Beef or Pork, Fresh.
Bluing.
Bread, Liquid.
Butter, Butter Products and Butterine. (See Rule No. 4.)
Cabbage.
Candies.
Canned Goods.
Celery.
Cider.
Cheese.
Cocoanut.
Confectionery.
Cranberries.
Dairy Freight.
Eggs.
Fish, Fresh.
FRUIT:
  Citrus, viz.:
    Oranges, Lemons and Grape Fruit.
  Deciduous, viz.:
    Cherries, Plums, Apricots, Pears, Grapes, Apples, etc.
  Tropical, viz.:
    Bananas, Pineapples, etc.
Fruit Juices.
Game.
Grape Juice.
Grapes.
*Ice.
Ink.
Juices, Fruit.
Kraut.
Liquors and Liquids, in glass or stone.
Lard.
Malt Extract.
Meat, Fresh.
Medicines, Liquid.
Melons.
Mineral Water.
Mince Meat.
Mucilage.
Nursery Stock.
Nuts, Edible.
Oleomargarine.
Onions, Green
Oysters, Fresh.
Packing House Products.
Paste.
Pickles.
Potatoes.
Poultry, Dressed.
Sauer Kraut.
Tallow. (See Rule No. 4.)
Trees, Shrubbery, etc.
Vegetables, Green.
Vinegar.
Water, Mineral.
Wine.

And any other articles which from their perishable nature require ventilation, refrigeration or protection against frost in transit.

*Keg beer, beer barrels, kegs or packages (empty), or Ice, must be loaded only in box cars or in cars assigned for Beer or Ice loading.

83129

1719

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Rule No.	INSPECTION OF FREIGHT.
13	**At point of shipment.**—Shipments should be carefully inspected at loading point and a permanent record made of condition. It is desirable that agents make note in record of weather or of any peculiar conditions which may have affected freight prior to delivery to carrier. If any condition whatsoever exists at time of inspection which may in any way prevent arrival of freight at final destination in good order, or in same condition as received, exception must be made on bill of lading, before it is signed (see Rules Nos. 29 and 46), shipping ticket and way-bill. The facts, with full information as to appearance, decay, dampness, pilferage, heat, broken packages, rough handling or other defect, must be promptly reported to official in charge of refrigerator service, also freight claim official, by wire if necessary. Inspection should be made jointly with shipper or his representative whenever possible. When loading is completed, make certain that doors have not been sealed with bar out of position, thus leaving door open at top or bottom.
14	**At all stations where Side Doors are Opened.**—Shipments should be carefully inspected at junctions with connecting lines, whenever practicable, and at any station where side doors are opened for any reason, or car is delayed. Inspection should be made also at any point if there are indications of previously concealed damage to freight. Employes are especially charged, in making inspections, to note pilferages, rough handling, shifting, flooding, decay, frost, heating, improper loading, weak packages, broken packages, leakage, insufficient bracing or stripping and any other damage or condition which could result in loss to carriers or shippers. When a car loaded with perishable freight gives any indication that car or contents is damaged, the agent at point of inspection should open one side-door slightly, insert thermometer, placing it even with top of load, close car-door, and after twenty minutes ascertain and carefully record temperature shown by the thermometer; also make a record of the outside temperature and the time of day. When re-closing side-doors, make certain that doors have not been sealed with the bar out of position, thus leaving door open at top or bottom. Inspection should be made jointly with messengers or local representatives of owners and connecting lines whenever possible. Record of inspections must be kept in permanent form and should show shipments found in good order as well as otherwise. When shipments are found in a condition unfit for transportation, on account of shifting of load, cars should be reloaded, stripped and braced. When shipments are found in extremely bad order from heat, decay or other condition, and are in need of extraordinary attention, the proper official should be notified by wire, but the car must not be held pending receipt of instructions. **Exceptions.**—Cars must not be opened solely for inspection when temperature is below freezing (32 degrees) (unless ordered in writing by messengers, local representatives of owners or connecting lines), nor when way-bill prohibits, nor when freight is in bond protected by government seals. Exception will also be made when freight consists of Packing House Products, Meats, Fish, Butter, Eggs, Cheese, Dressed Poultry, Bananas and Pineapples, unless there is evidence of damage.
15	**When Received from or Delivered to Connecting Lines.**—At junction points where cars are received from or delivered to connecting lines, shipments must be inspected whenever practicable, as provided in Rule No. 14. Further, the inspection should be jointly made, if possible, by representatives of both lines. Permanent station records should show result of joint inspection. Wires should be used if necessary in order to effect prompt handling. Cars must not be delayed solely for inspection of contents, unless there is plain evidence of damage. (See Rule No. 30.) **If cars are wrecked or damaged, be governed by Rule No. 17.**
16	**Destination.**—Shipments should be carefully inspected immediately upon arrival at destination, jointly, if possible, with consignee, shipper or their representative. The inspection should be the same as at regular inspection stations, as provided in Rule No. 14. If condition of freight demands immediate disposition, every effort should be made to protect carriers' and owners' interests. Inspection should be made daily until freight is delivered, and any indication of deterioration should be promptly reported to proper official, by wire if necessary. Permanent records must be kept of all inspections, showing date and hour and by whom made. All exceptions must be covered by usual "O. S. & D." reports to proper official. (See Rules Nos. 19 and 46.)
17	**At Point where Car or Shipment may be damaged.**—At any point where car or shipment may be damaged by wreck, or otherwise, sufficient to cause delay, agents, trainmen or other employes in charge must inspect the freight, ascertain approximate damage and cause, and immediately wire, if necessary, full report, including car number and initials, to proper official. Careful examination should be made in all cases for concealed damage and every effort made to protect freight. Daily inspections and records should be made until disposition is secured. See Rules as follows: No. 14—General. No. 129—Refrigeration. No. 164—Ventilation. No. 221—Protection against Freezing. No. 281—Less Carload Freight. Nos. 325-333—Transferring Shipments.
18	**Restripping or Rebracing Shipments after Inspection in Transit.**—When inspection shows car, contents or bracing to be in bad order, on account of examination by inspectors, prospective buyers or others, the car must not be allowed to go forward until packages are recoopered, load restripped and rebraced and car cleaned of any refuse resulting from inspection. It is the duty of consignee, shipper, or their representative, to perform this work and it must be insisted upon.
19	**Overs, Shorts, Sampling and Pilfering.**—All over, short or damaged freight must be properly recorded and reported to the freight claim officer or other proper official; also all evidences of fruit or other articles having been removed from packages. All inspection (including sampling) made by shipper, consignee, prospective buyer or parties acting in their behalf, must be made under the supervision of the carrier's employes, who must secure from the person making the inspection a receipt, written and signed, showing the condition of contents at the time of inspection. If any portion of the contents is removed as a sample, the quantity taken must be noted on the receipt and way-bill. A copy of the receipt must be securely attached to the way-bill which moves with the car. Inspection by any other than carrier's employe will not be permitted without proper authority from the carrier's local agent
20	**When Seals are Defective or Missing.**—When seals are defective or missing, the contents of cars shall be given the inspection called for by Rule No. 14. (See also Rule No. 23.)
21	**Inspection of Frosted Freight.**—(See Rule No. 222.)

Rule No.	
	SHIPMENTS AT DESTINATION.
40	**How Handled and Protected.**—Perishable freight at destination must be inspected, protected and delivered in accordance with Rule No. 16; also Rules as follows: Rule No. 131—Refrigeration. Rule No. 166—Ventilation. Rule No. 221—Protection Against Freezing.
41	**Notification to Consignees.**—When carload perishable freight arrives at destination, the agent will send a printed or written notice promptly, either by mail or messenger, to consignee or his authorized agent, and keep record of date and hour sent. **A telephone notice is not a sufficient notice,** and if used to expedite business must be followed at once by a written notice, as provided above. Consignee should be requested to remove lading from car without delay. For carriers' liability or owners' risk, see Rule No. 46 below.
42	**Records.**—Records at destination must be made in accordance with Rules Nos. 375-379.
	DISPOSITION OF CARS UNLOADED.
43	**Cleaning.**—Agents or other employes responsible at stations where cars are made empty must see that cars are thoroughly swept out and cleaned, so that there will be nothing left in them to decay and taint cars, thus rendering them unfit for future service. If cars need fumigating or disinfecting, notify superintendent or trainmaster, who will have the car forwarded to some point where there are proper facilities. Scrubbing or ordinary cleaning may be done at any point. Drip pans, waste pipes, traps, or any other devices on refrigerator cars must be thoroughly cleaned. Cars which have been cleaned and placed on storage track, pending use, should be sealed, to insure cars remaining in proper condition for loading.
44	**Examination of Devices.**—After cars are unloaded and cleaned, hatches should be opened, hatch plugs taken out, side doors hooked back for proper airing, drip-pans, waste-pipes and traps cleaned and flushed with water if possible, and the car made perfectly clean and dry ready for reloading, after which, when cars are placed on storage track, pending use, they should be sealed, to insure same remaining in proper condition for loading.
45	**Reassignment to Future Loading.**—Whenever practicable, cars whose tanks contain ice should be immediately assigned for perishable freight loading under refrigeration. If no such load is available at station where car is made empty, agent must immediately notify by wire the proper official, who will utilize car for perishable freight under refrigeration at some other point. All ice in tanks should be charged for in accordance with published tariffs.
	CARRIER'S LIABILITY OR OWNERS' RISK.
46	(See, also, Rules Nos. 13, 29 and 131).—Agents will not be excused for allowing freight to perish while in their possession. Failing to receive instructions for disposition, the agent or other employe in charge must dispose of it to the best advantage before it becomes worthless, and report fully to proper officials. If freight is not removed at destination promptly after arrival, or within free time allowed under demurrage rules, owner or authorized agent must be informed that carriers will not hold themselves liable for damage that may be caused by freight remaining in car or on company's property. Under any circumstances, the consignee or his agent must be informed that carrier's liability at destination is that of warehouseman only. In case delivery of freight cannot be made, agent will give personal attention to disposal of same, having first promptly wired proper official giving name and address of shipper, condition of freight and reason why consignee will not accept.
	CARDING CARLOADS.
47	Agent at station where a carload of perishable freight originates, or at junction point at which car is received, must see that a **"Perishable Freight"** card is properly made out and securely attached to both sides of car before going forward. These cards **must be** removed at destination.
	CONDUCTORS' TELEGRAPHIC ADVICE.
48	Conductors having cars of perishable freight in their trains (under refrigeration, ventilation, heating or other temperature protection) must send from stations to be designated by the superintendent, to agents at each regular icing or inspection station, a telegraphic report giving complete information, whether such cars are way-billed to be iced, ventilated or given other attention at such station or not. (This applies to all perishable freight whether moving in carloads or in less than carloads.) Failure of Conductors to notify icing or inspection stations will not, however, relieve agent or employe in charge of icing or inspection from examination of way-bills, cars, ice-tanks, drains, ventilators, heaters and other refrigerator service, and cars must be re-iced, ventilated, heated or protected, if necessary, according to rules herein.

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REFRIGERATION—ICING AND RE-ICING—Continued.

Rule No.	MANNER OF ICING.
107	**Preparing Ice.—Use only clean ice.**—Remove from the ice sawdust, chips, hay, dirt or anything likely to clog the drain pipes. Ice must not be broken on roofs or in tanks of cars, but should be crushed on platform or in boxes provided for that purpose.
108	**Weight of Ice Used.**—The weight of ice furnished in icing or re-icing must be recorded, and it is of the greatest importance that the amount furnished each car be ascertained and separately recorded. Do not divide total of ice furnished equally, but show actual amount given each car. Do not add shrinkage of any kind to weights recorded, but keep such items in separate accounts.
109	**Placing Ice in Tanks.**—Stow ice carefully. Do not use full cakes of ice for icing or re-icing of any character. When ice-tanks are empty, see that the first ice put in is broken small enough so when dropped it will not break bottom gratings of the tanks. Remainder of the ice should be broken into lumps of convenient size with sufficient crushed ice to fill all spaces. (See Rules Nos. 107 and 112.) There should be no space under the roof or running board of a fully iced car. Immediately after a car is iced, put in plugs snugly and close hatch covers. (See Rule No. 120.) **Initial Icing of Cars.**—If any car under ice is received from any packing house, or any other shipper, doing their own icing at any initial station, with the tanks less than full, a report thereof will immediately be sent to such shipper by the agent receiving such shipment, and a carbon copy thereof must be sent to the official in charge of refrigerator service for future reference by the carrier.
110	**Icing and Re-Icing Bananas.**—The icing and re-icing of Bananas (**when ordered**) will be performed in the same manner as other fruits. (See Rules Nos. 109, 111.) (This rule is subject, however, to special instructions, if any, given by shipper, consignee, or their representative, or by the messenger in charge of car.) Agents at icing stations are cautioned that when cars loaded with Bananas are iced or re-iced it will not be safe to close all ice-hatches, because this would produce too much refrigeration and would be apt to chill the Bananas. Bananas are usually accompanied by messengers in charge and it is their custom, when such cars are iced, to leave ventilators open and plugs out, at least at one end, to permit a circulation of air, thus allowing the cold air caused by the meltage of ice to escape from the car.
111	**Icing and Re-Icing Fruits, Berries, Melons and Vegetables.**—Fruits, Melons, Berries and Vegetables should, wherever possible, be loaded after car has received full initial icing, according to Rule No. 109, but when icing cars for **Strawberries and other Berries** ice should be broken into small pieces weighing not more than twelve pounds each. Cars must be iced before loading or immediately thereafter. (See Rule No. 100.) Before iced cars are moved, put in plugs, close hatches and side doors. All apertures must be kept closed as much as possible. (See, also, Re-Icing Rules Nos. 121, 123, 124, 125 and 126.)
112	**Icing Fresh Meat, Dressed Poultry and Fish.**—Cars under refrigeration containing highly perishable freight such as fresh meat, dressed poultry, fish or any commodity requiring a very cold temperature must be iced with crushed ice and salt. The ice should be broken into pieces not larger than a hen's egg, and, in the absence of specific way-bill instructions, use seven (7) pounds of No. 2 rock salt for each one hundred (100) pounds of ice. The ice and salt must be well mixed and thoroughly tamped. **Re-icing** of commodities covered by this rule is of especial importance. Way-bill instructions must be observed to the letter (see, also, Rules Nos. 123, 124, 125 and 126), both as to ice and salt. Use exact percentage of salt ordered and see that reports are correctly made accordingly. Clean off hatch covers and plugs before removing them. Do not allow cinders or other dirt to fall into tanks. Immediately after tanks are opened, the old ice should be tamped down solid by use of sharp-pointed wooden tamping poles. Do not use ice-breakers, pikes or other iron-shod tools. The use of salt causes rapid melting of ice, leaving a crust at top of the tanks, which, therefore, **appear** to be full. **They are not full,** and employes must not fail to break crust, thoroughly tamp old ice and re-ice cars as directed. Before placing any new ice in tanks, sprinkle over the old ice in each tank one-third of the salt to be supplied. Then fill the tanks with clean, crushed ice, as described above in this rule, and **on top** add remaining two-thirds of the salt. Tamp down each tank level and hard, put in plugs snugly and close hatch covers. **Re-ice the cars according to way-bills, whether the amount of ice and salt required be small or great.**
113	**Icing and Re-Icing Cured and Smoked Meats, Etc.**—Cured and smoked meats and other packing house products under refrigeration, when way-bills do not call for use of salt, will be iced and re-iced in accordance with Rule No. 111. (See Rule No. 123.)
114	**Icing and Re-Icing Butter, Eggs and Cheese.**—Butter, eggs, cheese and other dairy products under refrigeration will be iced and re-iced in accordance with Rule No. 111, unless way-bills call for use of salt. (See, also, Rules Nos. 123 and 257.)
115	**Use of Salt.**—A good supply of No. 2 rock salt should be kept at all icing stations. Its use is of importance and should be strictly in accordance with Rule No. 112. Keep a record of the number of pounds supplied each car separately from record of ice furnished.
116	**Icing and Re-Icing Beer.**—Shipments of beer "iced on top" at point of origin will not be re-iced in transit, except when delayed or on instructions from shipper or connecting line, and such instructions must appear on way-bills. Agents must require shippers to show on shipping tickets and bills of lading the date and hour the beer was loaded and iced, with further instructions, viz.: "Beer loaded and iced.....(hour) .....(date). Re-ice after expiration of..... hours with cake ice, if not at destination."
117	Shipments of **beer not** "iced on top," and moving in cars equipped with ice-tanks, will be iced and re-iced, if so provided on way-bills, in accordance with Rule No. 111.
118	**Icing and Re-Icing Less Carloads, Etc.**—(See Rules Nos. 111, 119 and 257.)

Rule No.	
	INSPECTION OF DRAINS, ETC.
127	At all icing, inspection and junction stations, all drain pipes on each car under ice must be examined with particular care to see that they are clean and running freely. The fact that pipes are dripping is not conclusive evidence that all water from melting ice is draining away. Insert a small iron rod into pipes, carefully moving it about until drains are wholly free from all obstruction. Drain-pipes inside of tanks, on meat or packers' cars, must be cleared by using a five-eighths inch rod not over eight feet long. Force the rod through drain-pipe until water runs freely. The lever on drain-pipes thus equipped should never be raised unless tanks are flooded, and then only long enough to drain half the brine from tanks, never allowing all brine to run off, and making sure that lever is again closed before replacing hatch covers. Report promptly to official in charge of refrigerator service any flooded cars, stating character of obstruction found in drain pipes and extent of damage to freight. Also report any misplaced hatch covers, missing or bad order plugs, and if missing plugs or hatch covers cannot be replaced at station reporting, wire next inspection station so that proper replacement or repairs can be made. Make certain that doors have not been sealed with bar out of position, thus leaving door open at top or bottom.
	DELAYED CARS.
128	When a car of perishable freight is held for any reason, it is the duty of Agent or other employe in charge to see that contents of car is protected. Car and contents must be examined upon arrival and a record made of condition, including amount of ice in tanks. If tanks are less than two-thirds (⅔) full, secure ice from any available source and fill tanks to capacity, using salt if salt was previously furnished. Examine the tanks daily so long as car is held, and do not allow ice to go below two-thirds (⅔) capacity of tanks. Each time car is iced fill tanks to fullest capacity. There is no exception to this rule unless contrary instructions are received from official in charge of refrigerator service. Report all ice furnished, showing each icing separately, with date and hour made and amount supplied. Should way-bill call for side-door ventilation, observe the instructions, unless temperature is below freezing. Report at once by wire to proper officials all delayed cars loaded with perishable freight, giving full way-bill reference, cause of delay and other pertinent information.
	BAD ORDER AND WRECKED CARS.
129	In case of damage to car under ice necessitating transfer of contents, wire proper officials immediately, giving full information, kind of freight, full way-bill reference and names of shipper and consignee, and advising if a refrigerator car is available for the transfer, with the number and initials of same. The car into which transfer is made should be iced as far in advance of such transfer as possible, using at least fifteen (15) per cent of No. 2 rock salt (if procurable), in order to reduce temperature rapidly. Keep car iced to full capacity until forwarded. Requisitions on Agents at icing stations for iced cars into which to transfer freight, must name commodity and give full icing instructions shown on billing for original car. For special instructions on transfers, see Rules Nos. 325–333, inclusive.
	DETOURED CARS.
130	When cars under ice are detoured account wash-out or for any other reason, agent receiving instructions which take cars from regular route will (in the absence of other special instructions) make notation on way-bill: "Car under refrigeration: re-ice to full capacity at all icing stations." Agents at junction points will see that tanks are filled before delivering car to connecting lines or arrange for immediate re-icing by connection. Secure ice from any available source and re-ice the car, making record and report showing amount furnished and date and hour of icing. Report by wire to proper officials all detoured cars loaded with perishable freight.
	ICING CARS HELD FOR DELIVERY.
131	Upon arrival at destination of carload perishable freight, under refrigeration, if shipment is not unloaded immediately, and the consignee refuses to instruct that the car be iced, serve at once a written notice on him that the car is in need of icing and is being held in that condition at owner's risk and that the charges for ice furnished at destination will be as provided in published tariffs of individual carriers. When cars are placed on team tracks, see that tanks are properly iced before placing, and examine tanks daily, not allowing them to go below one-half full, except upon written notice from owner or consignee, releasing the carrier from all responsibility for any damage which may result from lack of such additional refrigeration at destination. The daily examination is important and consignees must be kept advised as to condition. The above rule applies to all points, whether icing stations or other. Make a record and report of each icing separately, showing amount furnished and date and hour of icing. (See Rule No. 46.)
	ICING CARS HELD FOR DIVERSION OR RECONSIGNMENT.
132	Cars under ice held for diversion or reconsignment are subject to all the provisions of Rules Nos. 125 and 126, except that cars held at points other than billed destination must be re-iced to capacity before forwarding, observing Rule No. 123 in detail. Agents or other employes must not accept reconsigning orders beyond original billed destination unless such reconsigning orders include proper instructions as to refrigeration in transit. (See Rule No. 101.)
	ADVANCE NOTICE TO ICING STATIONS BY CONDUCTORS.
133	See Rule No. 48.

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Rule No.	INSTRUCTIONS ON BILLS OF LADING, CARD-BILLS, WAY-BILLS AND TRANSFER RECEIPTS—Continued.
155	**Messenger's Instructions.**—Messenger's Instructions as to ventilation will govern regardless of way-bill instructions only on cars in his charge. Instructions contrary to way-bills must be endorsed thereon by messenger who must also sign his name thereto and at the same time cancel the previous instructions thereon. All circumstances surrounding such changes must be recorded by employe in whose custody way-bills are when endorsement is made. In case the messenger, on leaving car, gives instructions for ventilation to destination at variance with way-bills, such instructions must be given in writing to, and filed by, the agent at station where car is abandoned. Agent will correct way-bill accordingly, showing where instructions were changed by authority of the messenger. (See Rule No. 350.)
156	**Standard Ventilating Instructions.**—In the absence of specific ventilating instructions, the shipping orders, bills of lading, card-bills, way-bills and transfer receipts must be stamped or carry in writing, the following standard instructions: "Put in ice-plugs, close hatches and (other) ventilators when the temperature falls below freezing (32 degrees). Open hatches and ventilators and take out ice-plugs immediately the temperature rises above freezing." When Garland Ventilators or others of similar design are used, the standard instructions will be: "Close ventilators when temperature falls below freezing (32 degrees); open ventilators immediately the temperature rises above freezing." **Note.**—For instructions about ventilating **Bananas** and **Pineapples**, consult Rules Nos. 167 and 202.
	EMPLOYES TO NOTE CHANGES OF TEMPERATURE AND REGULATE VENTILATION ACCORDINGLY.
157	Agents, Conductors, Inspectors or other employes in charge must **examine** way-bills and follow implicitly the instructions thereon, for ventilation. If way-bill envelopes are used, **do not** depend upon outside notations but examine billing enclosed. When temperature is below freezing and way-bills do not carry the positive instructions with release provided in Note 3 of Rule No. 151, employes must be governed by "Standard Ventilating Instructions" given in Rule No. 156. They should frequently determine temperature and examine all ventilating devices to see that they are set in accordance with instructions as governed by temperature. On account of temperature rapidly rising and falling during day and night, variations account of altitude, etc., Conductors and other employes are especially cautioned to observe this rule. Make careful record of all changes made in position of ventilators or other devices, stating time and temperature or other reason for action.
	RECORD OF POSITION OF VENTILATORS.
158	Agents at point of origin, inspection stations, junction and destination stations, Conductors (when first taking cars) or other employes in charge, and Inspectors, must make a full and complete record of the position of ventilators (that is, the hatch covers, plugs, patent ventilators or other ventilating openings) on all cars loaded with perishable freight. A record must be made each time any change in position is made, showing time and temperature or other reasons for such action. The records must also account for all ventilating openings on each car and state exactly the position of all devices as enumerated. (See Rules Nos. 22 and 23.)
	SIDE-DOOR VENTILATION AND INSPECTION IN TRANSIT.
159	At regular icing and inspection stations, cars loaded with perishable freight under ventilation must not be ventilated through side doors unless way-bill or other authoritative instructions expressly provide that it must be done; however, no side-door ventilation shall be given when temperature is below freezing or during unfavorable weather, such as rain-storms, snow-storms and sand-storms. (See Rules Nos. 151 and 162.) **Make certain** that doors are not sealed with bar out of position, thus leaving door open at top or bottom. Report promptly to official in charge of refrigerator service, any doors found open or ventilating devices set contrary to way-bill instructions or contrary to rules herein concerning temperature. See Rule No. 14. (For special instructions on banana shipments, see Rule No. 167.)
	ICING DELAYED VENTILATED CARS.
160	When cars loaded with perishable freight under ventilation are extraordinarily delayed, and in the opinion of employe in charge should be iced to avoid damage, telegraph official in charge of refrigerator service for instructions, giving full reference to car number, way-bill, contents of car, shipper and consignee. Cars must not be needlessly held, however, pending receipt of such instructions. Complete report should be made to proper official covering all circumstances governed by this rule.
	INSPECTION OF VENTILATORS, ETC.
161	In order to protect contents of cars under ventilation, extreme care must be exercised by all agents, trainmen and inspectors to see that the **ice-plugs are in** when hatches are closed, and **out** when **hatches are open.** Cars must not leave point of origin, inspection or junction station until all ventilators are in position in accordance with way-bill instructions. (See Rule No. 157.)

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PROTECTION AGAINST FREEZING.

Rule No.	TEMPERATURE AT WHICH PERISHABLE COMMODITIES SHOULD BE PROTECTED AGAINST FREEZING.
200	Regardless of the fact that carriers operate insulated cars, intended for the safe transportation of perishable freight, certain commodities (such as those enumerated below), are liable to be damaged by freezing, at the temperatures shown. **Carriers will not assume any responsibility for loss or damage to such goods by freezing.** If special protection is given by means of artificial heat, Rules Nos. 205 to 222, inclusive, will govern. **Fruits and Vegetables,** in carloads, during the winter months, when liable to damage by freezing in box cars, must be loaded into refrigerator cars. If tendered by one connecting line to another, loaded in box cars or fruit cars (without insulation), same must be reported by wire to the Superintendent who will supply an empty refrigerator car to the delivering line who shall transfer the product. (See Rules Nos. 325 and 326.)
201	**Fruits, Vegetables, Liquids, Eggs, and Cheese** loaded in refrigerator cars, are liable to be damaged by frost when the outside temperature is zero or lower. Shipments should be protected by artificially heating cars or otherwise, in accordance with the rules and regulations of individual carriers.
202	**Bananas** are more susceptible to frost than any other perishable commodity and, therefore, should be given special attention. The inside temperature of cars containing bananas should never be allowed to go below fifty-five (55) degrees above zero.
203	Cars containing **fresh meats, fresh fish, or dressed poultry,** should not be heated, but should be kept well iced with crushed ice and salt (in accordance with instructions on billing).
204	Cars loaded with **butter** should not be heated.
205	**Messengers' Instructions.**—When cars are accompanied by messengers, their instructions will be followed as to protection against freezing. (See Rules Nos. 219 and 350.)
	PREPARATION OF CARS.
206	The general preparation of cars will be in accordance with Rules Nos. 9, 10 and 11. In addition to this great care must be exercised to remove any inflammable material from the tanks of cars which are to be heated by stoves placed in the tanks.
207	**Carding Cars.**—All cars artificially heated must be carded on both sides: **"Heated Car."** These cards must be removed when heaters are taken out of car.
208	**To be heated by special appliances:** See local rules of individual carriers.
209	**To be protected by paper, straw, hay, manure, etc.**—Shippers will be required to do this work when they desire such protection, and the furnishing of necessary material and labor shall be wholly at the shipper's expense and risk. When such protection is furnished, a notation to that effect shall be made by the forwarding agent upon the shipping receipt, bill of lading, card-bill (if used), regular way-bill and should be repeated by junction agents upon the transfer-receipts.
210	**Ice, if any, in Tanks to be Removed.**—Before loading cars which are to be artificially heated or protected by paper or other lining, any ice remaining in tanks from previous service must be removed.
	SHIPPERS' INSTRUCTIONS.
211	Where special protection by artificial heat, use of stoves, etc., is desired, special arrangements must be made with the initial and intermediate carriers, by the shipper, owner or their agent, subject to the rules, regulations and charges for such service as may be duly published by each individual carrier. The arrangements so made will apply only to the individual carrier or carriers with whom they are made, and no obligation is assumed by any one carrier for the execution of any such agreement by its connection unless the latter is a direct party thereto.
	INSTRUCTIONS AND NOTATIONS ON BILLS OF LADING, CARD-BILLS, WAY-BILLS AND TRANSFER-RECEIPTS.
212	**Entering Instructions.**—Agents will enter on shipping order, bill of lading, card-bill, regular way-bill, and transfer-receipt, the full name of shipper, with the exact and complete instructions (as to heating or other special protection permitted under these rules) which are furnished by shipper or connecting line, but which must not be contrary to rules herein. Billing and re-billing agents must specify on card-bill, regular way-bill and transfer-receipt, from whom the charges (if any) for heat to be furnished shall be collected, that is, whether shipment travels subject to a stated heating charge or otherwise, and how, in any case, charges for heat, must be collected.
213	**Observance of Billing.**—Perishable freight artificially heated must not be allowed to go forward unaccompanied by full instructions as to physical handling of heaters or other devices enroute. Agents, Inspectors, Conductors and other employes responsible must **examine** way-bills and follow implicitly the instructions thereon for heating and care of devices. If way-bill envelopes are used, **do not** depend upon outside notations, but examine billing. Transfer receipts to connecting lines must show all heating instructions exactly as shown on regular way-bills or card-bills.
214	**Instructions to Accompany Cars.**—Agents at point of origin making arrangements with shippers for artificial heat, as authorized herein, must attach to billing or enclose in the way-bill envelope (if used) a copy of instructions governing the care and use of the heating device or protection used, and such instructions must accompanying shipment to destination and be observed by all employes of carriers interested.
215	If shipper or consignee orders cars forward, regardless of weather conditions, their positive written instructions at owner's risk, will be complied with, and same must be duly shown on billing used.

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LESS THAN CARLOADS—SCHEDULED, PICK-UP CARS, ETC.—Continued.

Rule No.	
	PREPARATION OF CARS FOR LOADING.
255	(See General Rules Nos. 9, 10 and 11.)
	CARDING.
256	All scheduled, peddler, "pick-up" and special cars for protection of less-than-carload perishable freight must be properly carded on both sides in accordance with instructions of individual carriers.
	PROTECTION OF CONTENTS.
257	**Icing and Re-icing of Less-than-carload Perishable Freight.**—(See local rules of individual carriers.)
258	**Ventilation of Less-than-carload Perishable Freight.**—(See Ventilation Rule No. 156.)
259	**Heating of Less-than-carload Perishable Freight.**—(See "Protection against Freezing," Rule No. 208.)
260	**Use of Scheduled Cars.**—Agents will see that all shippers are fully advised as to the days that refrigerator cars are regularly scheduled, and request them to make their shipments on those days.
	CONSIGNMENTS RECEIVED FROM SHIPPERS OR CONNECTING LINES WHEN REFRIGERATOR SERVICE CANNOT BE GIVEN.
261	**On other than Scheduled Days or to Points not Served.**—Agents will not accept small shipments of perishable freight on any days that the regularly scheduled refrigerator cars are not run, nor on any day for points to which no refrigerator service is provided, unless shippers make a written demand to forward the property in common box-cars. In such cases a notation must be made on shipping receipt and way-bill, as follows: "Forwarded in common box car at owner's risk."
262	**To Points Served Part Way.**—When perishable freight is offered at a station from which scheduled refrigerator cars are run for stations that scheduled line cars do not reach, agent must make notation on shipping receipt and way-bill, as follows: "No refrigerator car protection beyond ....." (showing station in blank space where freight will be taken out of scheduled car.)
263	**From Stations not Served by Schedules.**—Agents accepting perishable freight at points from which scheduled cars are not run, will see that shipments are loaded on trains which will make proper connection with scheduled cars at junctions or divisional points. If in doubt, consult train master. Agent must make notation on shipping receipt and way-bill, as follows: "Forwarded in common box-car at owner's risk, to be transferred at ....., to scheduled line No....."
	USE OF EXTRA OR AUXILIARY CARS.
264	If agents have a large amount of perishable freight for a regular scheduled car, they must notify Train Master or Conductor by wire, in advance, so that sufficient space may be left in car. If necessary, the Train Master will provide an extra car. Conductors must immediately notify Superintendent or Train Master by wire when scheduled cars are loaded full so that extra car can be provided for remainder of the schedule.
	CARE OF FREIGHT BEFORE LOADING.
265	All perishable freight accepted for transportation in scheduled cars must be handled and protected with great care before loading. If station is equipped with a cooler, freight should be given that protection and under other circumstances it must be held in freight house awaiting arrival of trains. **Do not leave perishable freight in the sun or exposed to the elements.**
	LOADING AND STOWING.
266	**Iced Packages.**—An extremely low temperature is not maintained in scheduled refrigerator cars (intended for loading with miscellaneous commodities and some of which cars are frequently opened in transit) and, therefore shippers of meat in small pieces (such as loins, etc.), dressed poultry, fish and other organic perishable freight in less than carload lots, requiring an extremely low temperature, should make use of packages containing ice as a protection to such freight, except during the cold season when it is practicable to transport such shipments without ice in packages.
267	**Restricted Articles.**—When shipments of dressed veal, hearts, livers, kidneys, brains, sweet-breads, beef loins, pork loins and trimmings, in less than carload lots, are offered during the summer season, agent must impress upon the shipper that the shipment is not likely to reach market in a saleable condition. When shippers insist on forwarding, the agent must make notation on shipping receipt and way-bill, as follows: "Shipped at owner's risk of decay."
268	**Careful Handling.**—In loading and unloading perishable shipments, special care must be taken in handling. All packages must be carried or trucked into and out of cars—**never rolled or thrown down. They must be kept top end up.**
269	**Butter** must not be loaded on top of packages containing eggs.

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TRANSFERRING SHIPMENTS IN TRANSIT.

Rule No.	
325	**Transferring Perishable Freight.**—The transferring of perishable freight from one car to another for any cause other than account wrecked, bad order or insufficiently insulated cars, should be avoided. (See Rules Nos. 200 and 326.) In case it becomes necessary for any reason to transfer carload perishable freight (see special rules following), the employe in charge must immediately notify by wire all interested officials, including officer in charge of refrigerator service. Telegram must give full information, kind of freight, full way-bill reference, names of shipper and consignee, nature and extent of damage to the car and contents, and number and initials of car into which shipment will be transferred. See rules as follows: Rule No. 129—Refrigeration. Rules Nos. 156, 164—Ventilation. Rule No. 221—Protection against Freezing. Rule No. 281—Less than Carloads. Rule No. 378—Records.
326	**Class of Car for Transfer.**—The car into which a shipment of perishable freight is transferred should be similar to and of the same class as the original car, if it is possible to secure such. This applies to refrigerated, ventilated or heated service. Exception.—See Rule No. 200.
327	**Preparation of Cars before Transfer.**—Preparation of cars into which perishable freight is to be transferred should be exactly in accordance with rules herein on preparation of cars, governed by the class of service under which freight is moving. (See Rules Nos. 9, 10 and 11; also rules as follows: Rule No. 100—Refrigeration. Rule No. 150—Ventilation. Rules Nos. 206-210—Protection against Freezing. Rule No. 255—Less than Carloads.)
328	**Reloading and Stowing Freight.**—It is extremely desirable that freight be loaded at transfer point exactly as loaded at point of origin. Employe in charge should carefully examine method of bracing, stripping and stowing previously used and follow the same plan in transferring, but **do not load** the freight solidly in the car. Provide proper air passages by means of strips and braces. If care is used, the loading material from original car can be made available. If time permits, freight should be loaded in same order as found in original car. This is particularly desirable in transferring deciduous fruits.
329	**Use of Tarpaulins.**—Where tarpaulins are available, they should be used to protect freight against dirt, cold, heat, rain and other storms, etc., while making transfers, and in the absence of such protection every possible care must be used to load the freight in a clean and dry condition.
330	**Telegraphing Proper Officials.**—Employes in charge, regardless of where transfers may be made, must not fail to wire all proper officials. In many cases heavy losses can be avoided by proper observance of this rule.
331	**Transfer of Bananas and Pineapples.**—In case of accident necessitating the transfer of **Bananas**, report by wire must be made to Trainmaster; also to the officer in charge of refrigerator service of carrier (on whose rails car is at that time), stating the nature and extent of damage to the cars and contents, with report of the action taken regarding the handling and forwarding. When Bananas are transferred they are, as a rule, more or less injured by being bruised, which causes them to reach destination in bad condition, in many cases overripe and worthless, causing heavy claims for damages. It is, therefore, absolutely necessary to avoid transferring when possible, and have the cars repaired without transfer, as, for the reasons given, there should be no handling of this class of fruit that can be avoided. When transfer cannot be avoided it must be done promptly and with great care, and the fruit placed in the same position as originally loaded by the shipper. Conductors or other employes in charge should confer with the proper official, if possible, before transferring, as to the best way of doing it, but in all cases the reports above referred to must be made. (See Rule No. 350.) **Pineapples** are crated and boxed, which protects them from bruising or damage if handled carefully. There is no objection to their being transferred when cars break down in transit, and transfer can be made quicker than the car can be repaired; but they should be handled carefully, and the car into which transfer is made should be in a good, clean condition so as not to taint the fruit, and the ventilators should be adjusted in the same manner as the car from which the transfer is made.
332	**Transferring Citrus Fruit.**—Whenever it is necessary to transfer citrus fruit, note instructions provided in rules as follows: Rule No. 330—Advices. Rule No. 326—Cars (Class of). Rule No. 327—Preparation of Cars Rule No. 328—Reloading and Stowing Rules Nos. 156, 164—Ventilation. Rules Nos. 109, 111, 129—Refrigeration. The following details will also govern: A standard car, 40 feet in length, contains 384 boxes, which must be loaded two tiers on end (labels up) and six rows wide, with bulged tops all facing the same way. During cold weather the car should be lined with building paper or other available insulation and in all cases the boxes must be raised from the floor on strips securely fixed. Use strips from original car if a supply is not otherwise available. Do not stow the boxes solidly in the car, but provide air spaces under each tier by use of loading strips. To prevent shifting of the load, take up space between each cross row of boxes by running strips across car from wall to wall, and fasten the strips to boxes with short nails which will not puncture the fruit. In all cases, employe in charge of transfer must make careful note of manner in which load was originally built and follow same in detail if possible. This is important when a car is not loaded from end to end and 2x4 bracing has been used in center. In such cases, the braces in the gangway must be replaced exactly as in the original car, or, if that is impossible, use sufficient lumber, from any available source, so that load will carry safely without shifting. Every effort must be made to protect shipper's and carrier's interest by carefully re-coopering broken boxes, keeping load clean and handling the fruit with care. Throwing boxes into cars, onto the ground, or other rough handling, means additional loss to all concerned. Do not fail to clean, ice, ventilate or heat the car in strict accordance with rules herein under the sections applicable as noted above

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RECORDS OF SERVICE.

Rule No.	
375	**Records of Service.**—Agents and other designated employes at points of origin, division terminals, icing or inspection stations, junction points and destinations, should make and preserve in permanent form the following information in connection with each car of perishable freight: (a) Regular way-bill: Series, number and date. (b) Card-bill: Series, number and date. (c) Car number and initial. (d) Name of loading point. (e) Name of billing point. (f) Name of billed destination. (g) Name of final destination. (h) Commodity: (Contents). (i) Instructions on way-bill, in detail, as to icing, salting, ventilation, heating or special. (j) Outside temperature on arrival and departure. (See Rule No. 14.) (k) Arrival: Train number, date and hour. (l) Departure: Train number, date and hour. (m) Position of plugs, ventilators, hatches or other devices on arrival and departure. (n) Seals: All seals on all openings, on arrival and departure. (o) Amount of ice in tanks, on arrival and departure. (p) Amount of ice furnished: each icing shown separately; date and hour. (q) Amount of salt, if any, furnished with each icing. (r) How and to whom ice and salt is charged. (s) Icing way-bill, if any, full record. (t) Condition of drains, pans, pipes, etc., on arrival and departure. (u) Inspection, if any, of freight (contents). (v) Record of delivery to consignee, to connecting line, or of reconsignment or otherwise. Full record of transfer receipt. (w) Record of unusual circumstances in connection with car or shipment, including apparent neglect at previous icing or inspection stations.
376	**Records of Heating.**—When artificial heat is supplied (in accordance with rules herein) to cars containing perishable freight, a complete record of the heating must be made by the agents or employes having charge of such cars. When cars are held at a given point, under artificial heat, the outside and inside temperature must be taken and recorded at least three times each day, at 7 A. M., 12 noon and 6 P. M. The record must also show date and hour that heaters are placed in cars, location of heaters in cars, and date and hour heaters are removed. Record should be made also of date and hour when side-doors of cars are opened at any point; as well as of care given to heating apparatus.
377	**Records of Inspection.** (See Rule No. 375.) (a) **Cars.**—See Rule No. 375 (t), and Rules as follows: Rule No. 11—General Inspection. Rule No. 127—Refrigeration. Rule No. 161—Ventilation. Rule No. 218—Protection against Freezing. (b)—**Freight.**—See Rule No. 375 (u), and Rules as follows: Rules Nos. 13-21, 32—General Rules. Rule No. 302—Interchange.
378	**Records of Delays, Bad Order Cars, Wrecks, Detours and Transfers.**—Records of delays, bad order and wrecked cars should be made in accordance with Rule No. 375; also Rules as follows: Rule No. 32—General Rule. Rules Nos. 128, 129—Refrigeration. Rules Nos. 160, 162, 164—Ventilation. Rule No. 221—Protection against Freezing. Rule No. 281—Less than Carloads. Rule No. 325—Transferring.
379	**Records of Diversions and Reconsignments.**—Records of Diversions and Reconsignments should be kept in accordance with instructions issued by official in charge of such service, of individual carriers.
	INFORMATION TO SHIPPERS, CONSIGNEES AND CONNECTING LINES.
390	**To Shippers or Consignees.**—Agents or other employes must not undertake to answer inquiries regarding the service record of perishable freight. Such inquiries should be referred to the officer in charge of refrigerator service.
391	**To Carriers**—Agents may answer inquiries from carriers relative to service-records, when so authorized by the rules and regulations of the respective carriers.

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FOR THE GUIDANCE OF EMPLOYES ONLY.

Railroad Refrigerator Service Association

CIRCULAR No. 27.

THE ATCHISON, TOPEKA & SANTA FE RY. SYSTEM.

CHICAGO, BURLINGTON & QUINCY R. R.
Transportation Dept. Circular No. 110.

CHICAGO ROCK ISLAND & PACIFIC RY.
Refrigerator Service Circular No. 60.

CHICAGO, ROCK ISLAND & EL PASO RY.

CHICAGO & EASTERN ILLINOIS R. R.
Circular No. 43.

CHICAGO & NORTH-WESTERN RY.

COLORADO & SOUTHERN RY.
G. F. O. Circular No. 303.

DAIRY SHIPPERS DESPATCH, operating via
New York, Chicago & St. Louis R. R.

DENVER & RIO GRANDE R. R.

EL PASO & SOUTHWESTERN CO.
Circular G. F. O. No. 945.

EVANSVILLE & TERRE HAUTE RY.
Circular No. 42.

GALVESTON, HARRISBURG & SAN ANTONIO RY.
Circular No. 32-B.

GREAT NORTHERN RY.

HOUSTON & TEXAS CENTRAL R. R.

HOUSTON, EAST & WEST TEXAS RY.

ILLINOIS CENTRAL R. R.
Refrigerator Service Circular No. 51.

INDIANAPOLIS SOUTHERN R. R.
Refrigerator Service Circular No. 51.

MISSOURI, KANSAS & TEXAS RY.
Circular No. 729.

MORGAN'S LOUISIANA & TEXAS R. R.
Circular No. 1105.

NEW YORK CENTRAL FAST FREIGHT LINES, Circular No. 1, operating via
Michigan Central R. R.
Circular No. 1672.
Lake Shore & Michigan Southern Ry.
Circular No. G. F. D. 471.
Cleveland, Cincinnati, Chicago & St. Louis Ry.
Circular No. A-406.

NEW YORK DESPATCH REFRIGERATOR LINE, operating via
Grand Trunk Ry.

NORTHERN PACIFIC RY.

OREGON RAILWAY & NAVIGATION CO.
Circular No. G. F. D. 613.

OREGON SHORT LINE.
Circular No. G. F. D. 3113.

PACIFIC FRUIT EXPRESS CO.
Circular No. 3.

RIO GRANDE WESTERN RY.

ST. JOSEPH & GRAND ISLAND RY.
Circular No. G. F. O. 5137.

ST. LOUIS & SAN FRANCISCO R. R.
Circular No. 209-C.

SANTA FE REFRIGERATOR DESPATCH CO.
Circular No. 2-B.

SAN PEDRO, LOS ANGELES & SALT LAKE R. R.
Circular No. S. R. L. 176.

SOUTHERN PACIFIC CO.
Circular No. G. F. D. 210

SPOKANE INTERNATIONAL RY.

TEXAS & NEW ORLEANS R. R.

UNION PACIFIC R. R.
Refrigeration Dept. Circular No. R-5.
Circular No. G. F. O. 922.

THE YAZOO & MISSISSIPPI VALLEY R. R.
Refrigerator Service Circular No. 51.

GENERAL RULES AND REGULATIONS

GOVERNING THE HANDLING OF

PERISHABLE FREIGHT

(Superseding all previous instructions conflicting herewith, and canceling issues enumerated on page 2.)

Defendants Exhibit 16

Issued by the

Railroad Refrigerator Service Association

EFFECTIVE JULY 1, 1908.

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GENERAL APPLICATION OF RULES

This Circular applies on all perishable freight-traffic, including both local shipments and business delivered to or received from connecting lines, when moving over the rails of the carriers specified on the first page hereof. The instructions herein must be observed by employes of all departments.

EXCEPTIONS, if any, concerning local traffic only, may be covered by separate issues of the individual carriers. (Copies of special issues containing such exceptions are to be filed with the Secretary of the Railroad Refrigerator Service Association.)

ICING CHARGES will be as provided in the published tariffs of individual carriers.

LIST OF PERISHABLE COMMODITIES.

*Ale, Beer and Porter.
Apples.
Berries.
Bacon and Hams.
Beef or Pork, Fresh.
Bluing.
Bread, Liquid.
Butter, Butter Products and Butterine. (See Rule No. 4.)
Cabbage.
Canned Goods.
Celery.
Cider.
Cheese.
Cocoanut.
Cranberries.
Dairy Freight.
Eggs.
Fish, Fresh.
FRUIT:
  Citrus, viz.:
    Oranges, Lemons and Grape Fruit.
  Deciduous, viz.:
    Cherries, Plums, Apricots, Pears, Grapes, Apples, etc.
  Tropical, viz.:
    Bananas, Pineapples, etc.
Fruit Juices.
Game.
Grape Juice.
Grapes.
*Ice.
Ink.
Juices, Fruit.
Kraut.
Liquors and Liquids, in glass or stone.
Lard.
Malt Extract.
Meat, Fresh.
Medicines, Liquid.
Melons.
Mineral Water.
Mince Meat.
Mucilage.
Nursery Stock.
Nuts, Edible.
Oleomargarine.
Onions, Green.
Oysters, Fresh.
Packing House Products.
Paste.
Pickles.
Potatoes.
Poultry, Dressed.
Sauer Kraut.
Tallow. (See Rule No. 4.)
Trees, Shrubbery, etc.
Vegetables, Green.
Vinegar.
Water, Mineral.
Wine.

And any other articles which from their perishable nature require ventilation, refrigeration or protection against frost in transit.

*Beer (keg), Beer Barrels (empty), or Ice must be loaded only in cars assigned for Beer or Ice loading.

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Rule No.	INSPECTION OF FREIGHT.—Continued.
14	**At Local Inspection Stations and at all Stations where Side Doors are Opened.**—Shipments should be carefully inspected at regular icing, inspection and junction stations, or at any station where side doors are opened or car is delayed. Inspection should be made also at any point if there are indications of previously concealed damage to freight. Employes are especially charged, in making inspections, to note pilferages, rough handling, shifting, flooding, decay, frost, heating, improper loading, weak packages, broken packages, leakage, insufficient bracing or stripping and any other damage or condition which could result in loss to carriers or shippers. Inspections should be made jointly with messengers or local representatives of shippers and connecting lines whenever possible, and in freezing weather only on their request and authority. Record of inspections must be kept in permanent form and should show shipments found in good order as well as otherwise. Any exception must be plainly noted on way-bill, transfer-receipt or freight-bill. When shipments are found in a condition unfit for transportation, on account of shifting of load, cars should be reloaded, stripped and braced. When shipments are found in extremely bad order from heat, decay or other condition and are in need of extraordinary attention, the proper official should be notified by wire, but the car must not be held pending receipt of instructions. **Exceptions.**—Cars must not be opened solely for inspection when temperature is below freezing (32 degrees), nor when way-bill prohibits, nor when freight is in bond protected by government seals. Exception will also be made when freight consists of Packing House Products, Meats, Fish or Dressed Poultry, unless there is evidence of damage to car or contents.
15	**When Received from or Delivered to Connecting Lines.**—At junction points where cars are received from or delivered to connecting lines, the inspection of shipments must be the same as at regular inspection stations, as provided in Rule No. 14. Further, the inspection should be jointly made, if possible, by representatives of both lines. Transfer-receipts as well as permanent station records should show result of inspection. Wires should be used if necessary in order to effect prompt handling. Cars must not be needlessly delayed solely for inspection of contents, unless there is plain evidence of damage. (See Rule No. 30.)
16	**At Destination.**—Shipments should be carefully inspected immediately upon arrival at destination, jointly, if possible, with consignee, shipper or their representative. The inspection should be the same as at regular inspection stations, as provided in Rule No. 14, and, in addition, a record must be made of inside temperature of car on arrival, when there is any indication that car or contents is damaged. If condition of freight demands immediate disposition, every effort should be made to protect carriers' and owners' interests. Inspections should be made daily until freight is delivered, and any indication of deterioration should be promptly reported to proper official by wire if necessary. Permanent records must be kept of all inspections, showing date and hour and by whom made. All exceptions must be covered by usual "O. S. & D." reports to proper official. (See Rules Nos. 19 and 40.)
17	**At Point where Car or Shipment may be Damaged.**—At any point where car or shipment may be damaged by wreck, or otherwise, sufficient to cause delay, agents, trainmen or other employes in charge must inspect the freight, ascertain approximate damage and cause, and immediately wire, if necessary, full report, including car number and initials, to proper official. Careful examination should be made in all cases for concealed damage and every effort made to protect freight. Daily inspections and records should be made until disposition is secured. See Rules as follows: No. 129—Refrigeration. No. 164—Ventilation. No. 221—Protection against Freezing. No. 281—Less Carload Freight. Nos. 325-333—Transferring Shipments.
18	**Restripping or Rebracing Shipments after Inspection in Transit.**—When inspection shows car, contents or bracing to be in bad order, on account of examination by inspectors, prospective buyers or others, the car must not be allowed to go forward until packages are recoopered, load restripped and rebraced and car cleaned of any refuse resulting from inspections. It is the duty of consignee, shipper, or their representative, to perform this work and it must be insisted upon.
19	**Overs, Shorts, Sampling and Pilfering.**—All over, short or damaged freight must be properly recorded and reported to the freight claim officer or other proper official; also all evidences of fruit or other articles having been removed from packages. All inspections (including sampling) made by shipper, consignee, prospective buyer or parties acting in their behalf, must be made under the supervision of the carrier's employes, who must secure from the person making the inspection a receipt, written and signed, showing the condition of contents at the time of inspection. If any portion of the contents is removed as a sample, the quantity taken must be noted on the receipt and way-bill. A copy of the receipt must be securely attached to the way-bill which moves with the car. Inspection by any one other than carrier's employe will not be permitted without proper authority from the carrier's local agent.
20	**When Seals are Defective or Missing.**—When seals are defective or missing, the contents of cars shall be given the inspection called for by Rule No. 14. (See also Rule No. 23.)
21	**Inspection of Frosted Freight.**—(See Rule No. 222.)
	SEALS.
22	**Application of Seals.**—Seals must be applied and kept applied to side doors, end doors, hatches or other openings of all cars containing perishable freight, except to the hatches of such cars as are not provided with posts or other sealing devices. Whenever seals are applied, care must be taken that a proper record of both the old and new seals is made and that the old seals are removed before the new ones are applied.
23	**Defective Seals.**—Conductors finding cars in their trains with defective or broken seals on hatches will reseal, if possible, or have new seals applied at first available point. If the defective or broken seals are on side doors, the car will be carefully watched until it can be inspected in accordance with Rule No. 14. Agents at originating or receiving points, intermediate inspection points and destination or delivery points will keep a record of seals applied and those found on cars, as shown in Rules Nos. 22 and 375.

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GENERAL RULES.—Continued.

Rule No.	DISPOSITION OF CARS UNLOADED.
43	**Cleaning.**—Agents or other employes responsible at stations where cars are made empty must see that cars are thoroughly swept out and cleaned, so that there will be nothing left in them to decay and taint cars, thus rendering them unfit for future service. If cars need fumigating or steaming (disinfecting), notify superintendent or trainmaster, who will have the car forwarded to some point where there are proper facilities. Scrubbing or ordinary cleaning may be done at any point. Drip-pans, waste-pipes, traps, or any other devices on refrigerator cars must be thoroughly cleaned.
44	**Examination of Devices.**—After cars are unloaded and cleaned, hatches should be opened, hatch plugs taken out, side doors hooked back for proper airing, drip-pans, waste-pipes and traps cleaned and flushed with water if possible, and the car made perfectly clean and dry and ready for reloading.
45	**Reassignment to Future Loading.**—Whenever practicable, cars whose tanks contain ice should be immediately assigned for perishable freight loading under refrigeration. If no such load is available at station where car is made empty, agent must immediately notify by wire the proper official, who will utilize car for perishable freight under refrigeration at some other point. All ice in tanks should be charged for in accordance with published tariffs.
	CARRIERS' LIABILITY OR OWNERS' RISK.
46	(See, also, Rules Nos. 13 and 29.)—Agents will not be excused for allowing freight to perish while in their possession. Failing to receive instructions for disposition, the agent or other employe in charge must dispose of it to the best advantage before it becomes worthless, and report fully to proper officials. If freight is not removed at destination promptly after arrival, or within free time allowed under demurrage rules, owner or authorized agent must be informed that carriers will not hold themselves liable for damage that may be caused by freight remaining in car or on company's property. Under any circumstances, the consignee or his agent must be informed that carrier's liability at destination is that of warehousemen only. In case delivery of freight cannot be made, agent will give personal attention to disposal of same, having first promptly wired proper official giving name and address of shipper, condition of freight and reason why consignee will not accept.

REFRIGERATION—ICING AND RE-ICING.

Rule No.	REFRIGERATION—ICING AND RE-ICING.
100	**Preparing Cars for Movement Under Ice.**—General inspection should be made in accordance with Rules Nos. 9, 10 and 11. Before icing a refrigerator car, see that it is clean; that the ice-tanks, drip-pans, drains and traps are clean and in perfect order; that all plugs for ice-tanks fit snugly, and that all covers to hatches are provided with hasp and staple for sealing. Examine doors and make certain that rods and staples, both at top and bottom, are in good order. Cars should be iced several hours before loading wherever possible, doors and other openings being closed in order to keep interior of car cold. (See Rule No. 121).
101	**Shippers' Instructions.**—The law which imposes certain liabilities on the carriers of perishable freight under refrigeration renders it imperative that they shall handle the traffic without unnecessary restrictions. Therefore, forwarding agents must request and secure **definite** and reasonable written instructions from shippers or connecting lines as to refrigeration in transit, such as: "Re-ice to full capacity at all regular icing stations." "Not under refrigeration; do not ice." Agents must refuse to accept **indefinite** or unreasonable instructions, such as: "Under ice." "Re-ice when necessary." "Keep iced." "Ice oftener if delayed." "Keep bunkers full to destination." "Keep fully iced to destination." "Re-ice every twenty-four hours." When car is received from shippers with ice in tanks, the inference is that car is under refrigeration, and when so received, such instructions as "Do not re-ice" shall not be accepted. Agents are hereby cautioned that in all cases the best results in refrigeration are obtained when ice-tanks are full. Partial icings are practically useless and undesirable, whether presumptive haul is to be long or short. Instructions which will result in anything less than full icing should be discouraged, and in case indefinite or unreasonable instructions are tendered by shippers or connections, agents will be governed by the rules which follow.
	INSTRUCTIONS ON WAY-BILLS, CARD-BILLS, TRANSFER-RECEIPTS AND BILLS OF LADING.
102	**Regular way-bills** should, in all cases, **accompany the car.** The use of card-bills for perishable freight is extremely undesirable and should be avoided.
103	**Entering Instructions.**—Agents will enter on regular way-bill, card-bill, transfer-receipt and bill of lading the full name of shipper, with the exact and complete instructions for icing and re-icing which are furnished by shipper or connecting line, but which must not be contrary to rules herein. Billing and re-billing agents must specify on regular way-bill and card-bill from whom the charges (if any), according to published tariffs, for ice to be furnished, shall be collected; that is, whether shipment travels subject to a stated refrigeration charge or otherwise, and how, in any case, charges (if any) for ice must be collected.
104	**Icing Instructions to Accompany Cars.**—Perishable freight under refrigeration must not be allowed to go forward unaccompanied by icing and re-icing instructions on billing used. Agents, inspectors, conductors and other employes responsible must **examine** way-bills and follow implicitly the instructions thereon for icing and re-icing. (See Rules Nos. 106 and 123.) If way-bill envelopes are used, **do not** depend upon outside notations, but examine billing. Transfer-receipts to connecting lines must show all refrigeration instructions exactly as shown on regular way-bills or card-bills.

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REFRIGERATION—ICING AND RE-ICING.—Continued.

Rule No.	
	MANNER OF ICING.—Continued.
118	**Icing and Re-Icing Less Carloads, Etc.**—(See Rules Nos. 111, 119 and 257.)
119	**Icing and Re-Icing Other Commodities.**—Miscellaneous commodities under refrigeration not specifically provided for in Rules Nos. 110–118, inclusive, will be iced and re-iced in accordance with Rule No. 111, unless official in charge of refrigerator service issues special instructions to the contrary, or unless way-bills carry special provisions for the service. In either case the special instructions will govern.
120	**Closing Tanks after Icing.**—In order to secure full benefit of refrigeration in car, ice-tanks should be tightly closed after icing and re-icing. See that plugs fit snugly and that hatch covers are in good order, completely closing and covering hatch. Ice-tanks should not be filled so full that plugs and covers cannot be properly replaced.
	RE-ICING AND INSPECTION AT POINT OF ORIGIN.
121	Cars loaded with perishable freight under refrigeration must not go forward from point of origin, or initial icing station, unless tanks are full of ice. If necessary hold car for re-icing rather than damage freight through insufficient refrigeration. If empty cars have been moved a considerable distance to loading point under ice, or if delay in loading has reduced ice in tanks to two-thirds full, such cars must be re-iced before starting on journey to next loading station, re-icing station or destination. Melting of ice during loading and during initial portion of journey, before freight and car are cold, is very rapid. It is therefore important that inspection of tanks be very rigid and re-icings frequent. Re-icing should be the same as initial icing, except that in all cases the old ice in the tanks must be tamped solid before new ice is placed in tanks. In case of serious delay in loading, secure ice from any available source and re-ice the car to capacity daily, until forwarded. Under all circumstances make record and report each icing separately, and date and hour given. See also Rule No. 13.
122	**Inspection at Blind Sidings.**—When refrigerator cars are loaded with perishable freight at blind sidings, Conductors must carefully examine the freight, ice-tanks, drip-pans and other appliances, and make proper record as to the condition of same, in their train books, because it is unwise to let the cars go forward for inspection at the first district terminal, as the contents would be liable to damage (by overflow or otherwise) during hot weather, before the terminal was reached. Conductors, therefore, will understand the importance of giving their personal and close attention to this matter.
	RE-ICING IN TRANSIT.
123	Instructions on way-bills and standard instructions herein, to re-ice cars at certain stations, are based on presumption that cars will make scheduled running time and such instructions are imperative in all cases regardless of the amount of ice tanks contain, or of weather or other conditions. No one should presume that the additional ice is not necessary. When cars under ice are received at junction or re-icing stations and no instructions for re-icing are shown on way-bill, they must not be allowed to pass forward unless boxes are at least two-thirds full. Make careful record and full report of all icings to official in charge of refrigerator service. When tariffs provide that ice-tanks shall be full at time of delivery to connecting line, agents must see that this tariff provision is strictly observed.
124	**In case of failure to re-ice a car at a station where it should have been re-iced,** prompt telegraphic action must be taken to have it re-iced at the next icing station, and such fact reported to the proper official.
	RE-ICING AT RE-ICING, INSPECTION AND JUNCTION STATIONS.
125	**Inspection and Re-Icing.**—Tanks of each and every car must be carefully examined immediately on arrival at re-icing, inspection and junction stations. If car is re-iced it should be done at once, as icing stations are located with reference to scheduled running time between them. Delay in setting cars to ice-house or any delay in re-icing may cause serious loss. This is important. See Rule No. 123. **Tamping.**—Old ice in tanks must be tamped down solid by use of sharp pointed, wooden tamping poles, and car immediately re-iced unless way-bill prohibits. Do not use ice breakers, pike poles or any iron-shod tools for tamping. A correct record must be kept showing amount of ice in tanks on arrival, how much furnished each car separately and date and hour of re-icing. Report promptly to proper official any signs of dirty ice, improper icing or apparent neglect at last icing or inspection station.
126	**At Junction Stations.**—Agents should re-ice cars under refrigeration, to capacity before delivery to a connecting line, or arrange for immediate re-icing by connection when local agreements to that effect are in force. Cars should not go forward from junction or other station in need of re-icing, regardless of local conditions, and cars iced by connecting lines should be tendered with ice tanks filled to capacity. If necessary ice should be secured from any available source and cars re-iced, unless ice is absolutely unobtainable (See Rule No. 124.) All re-icings should conform in character with rules Nos. 107 to 120, inclusive

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Rule No.	
	PREPARING CARS FOR MOVEMENT UNDER VENTILATION.
150	The general inspection of cars for ventilator service should be made in accordance with Rules Nos. 9, 10 and 11, as far as applicable. When a ventilator car, without ice-tanks, is to be used, the inspection should also include side and end windows or other openings to see that they are all in good order and working smoothly. When a car equipped with ice-tanks is used as a ventilated car, and the instructions at loading point provide for open ventilators in transit, the hatch-covers must be opened, hatch-plugs dropped into tanks, and waste pipes opened and cleared of all obstructions, so as to admit a free circulation of air through interior of car. If the car is provided with patent ventilators they must be set up and secured in that position. When cars are not provided with the patent ventilators, the hatch-covers must be raised and firmly secured in position by means of the sealing bars provided for that purpose. If ventilators are to be closed, make certain that plugs are in before hatch-covers are closed. When ordinary ventilator cars, without tanks, are used, and the instructions at loading point provide for open ventilators in transit, the openings provided for that purpose must be opened and firmly secured, to admit a free circulation of air through interior of car. When a car equipped with ice-tanks is to be used as a ventilated car (or to be loaded with any freight not under refrigeration), any ice remaining in the tanks from previous service must be removed. A record must be kept at point of origin showing position of all devices and condition of tanks. (See Rules Nos. 151 and 375.)
	SHIPPERS' INSTRUCTIONS.
151	The law which imposes certain liabilities on the carriers of perishable freight under ventilation renders it imperative that they shall handle the traffic without unnecessary restrictions, but shippers must be expressly advised that carriers are not responsible for the ventilation of such perishable freight as is accepted wholly at owner's risk of loss or damage from heat or frost. Therefore, forwarding agents must request and secure definite and reasonable written instructions from shippers or connecting lines as to ventilation; but shipping receipts or bills of lading at variance with rules herein must not be signed. Written ventilating instructions bearing any of the following notations may be accepted at owner's risk: "Standard ventilation." (See Rule No. 156.) "Keep ventilators open to destination." "Keep ventilators open to....." (See Note.) "Keep rear ventilators open to destination." "Keep rear ventilators open to....." (See Note.) "Keep ventilators closed and plugs in to destination." "Close ventilators and put in plugs at....." (See Note.) "Close front ventilators and put in front plugs at....." (See Note.) "Open one (or two) †side-door for ventilation at....." (See Note.) †"Side-door not to be opened for ventilation when temperature is below freezing (32 degrees)." Note.—No points other than regular icing and inspection stations to be inserted. Agents must refuse to accept indefinite instructions, such as "Under Ventilation," "Close ventilators if necessary," "Vents closed," "Vent if necessary," "Ventilate at junctions." Agents are hereby cautioned that in all cases the safest instructions are "Standard" (see Rule No. 156), and it is desirable that they be used. Instructions which will result in certain damage account of freezing or heating should be discouraged, and in case indefinite or unreasonable instructions are tendered by shippers or connecting lines, agents will be governed by the rules which follow. (For special instructions on Banana shipments, see Rule No. 167.)
	INSTRUCTIONS ON WAY-BILLS, CARD-BILLS, TRANSFER RECEIPTS AND BILLS OF LADING.
152	**Regular way-bill** should, in all cases, accompany the car. The use of card-bills for perishable freight is extremely undesirable and should be avoided.
153	**Repeating Instructions from Shippers or Connecting Lines:**—Particular attention must be given to the ventilation of cars in relation to their perishable contents, the weather, and instructions on way-bills, card-bills or transfer receipts. Do not deviate from way-bill or standard instructions (see also Rule No. 155) except on special authority of official in charge of refrigerator service. Agents will enter on regular way-bill, card-bill, transfer receipt and bill of lading the exact and complete instructions for ventilation which are furnished by shipper or connecting line, but which must not be contrary to rules herein.
154	**Instructions to Accompany Cars:**—Perishable freight under ventilation must not go forward unaccompanied by ventilation instructions on the billing used. Agents, inspectors, conductors and other employes responsible must **EXAMINE** way-bills and follow implicitly the instructions thereon for ventilation except when temperature is below freezing. In the absence of authoritative instructions, they must be governed by Rule No. 156 "Standard Instructions," which must then be entered on way-bill. If way-bill envelopes are used, **DO NOT** depend upon outside notations, but examine billing enclosed. Transfer receipts to connecting lines must show all ventilating instructions exactly as shown on regular way-bills or card-bills. Record must be kept showing all changes made in position of ventilators or other devices, including time and temperature, or other reasons for such change.
155	**Messenger's Instructions:**—Messenger's Instructions as to ventilation will govern regardless of way-bill instructions only on cars in his charge. Instructions contrary to way-bills must be endorsed thereon by messenger who must also sign his name thereto. All circumstances surrounding such changes must be recorded by employe in whose custody way-bills are when endorsement is made. In case the messenger, on leaving car, gives instructions for ventilation to destination at variance with way-bills, such instructions must be given in writing to, and filed by, the agent at station where car is abandoned. Agent will correct way-bill accordingly, showing where instructions were changed by authority of the messenger. (See Rule No. 350.

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VENTILATION.—Continued.

Rule No.	
	VENTILATION OF BAD ORDER AND WRECKED CARS.
164	In case of damage to car loaded with perishable freight under ventilation necessitating transfer of contents, wire proper officials immediately, giving full information, kind of freight, full way-bill reference and names of shippers and consignees, and advising if a ventilator car is available for the transfers with number and initials of same. The car into which transfer is made should be similar to original car if possible to secure one (see Rule 160), and for special instructions on transfers, see Rules Nos. 325–333.
	CARS MOVING PART WAY UNDER VENTILATION.
165	Cars moving part way under ventilation and put under refrigeration at some point enroute are subject to all ventilation instructions herein up to point where car is iced.
	VENTILATION AT DESTINATION OR RECONSIGNING POINTS.
166	Upon arrival at destination or reconsigning point of ventilated carload perishable freight, agents must see that all ventilating devices are in position in accordance with way-bill instructions. Plugs, hatch covers, ventilators, windows and other devices must be examined daily and at each time the temperature reaches 32 degrees, either rising or falling. If they are at variance with way-bill instructions, the position must be changed at once to agree with such instructions. This is important and must be followed until car is unloaded or sent forward. Records must show position of all devices on arrival of car, including time and temperature, and a full and complete record must be made of all changes on car until all the freight is unloaded, or car is sent forward.
	VENTILATION OF BANANAS AND PINEAPPLES.
167	Cars should go through to destination with ventilators in same position as when received by carriers, unless changed in transit by a messenger in charge or by special instructions from the proper officials of carrier, which will only be done on written orders from consignor or consignee, their duly authorized agents, or messengers leaving cars at junctions or other points. The order must be in writing, and copy of same retained by the person receiving it, the original being promptly sent to the officer in charge of refrigerator service of carrier on whose rails car is at that time, and full particulars of the action taken must accompany such orders. Refrigerator cars are ventilated by means of openings in the roof, which are closed by plugs and covered by trap doors. (a) When instructions are given to open ventilators, all the plugs are to be removed and the trap doors raised and blocked up to give ventilation. (b) When ventilators are ordered closed, the inside plugs are to be put in place and the trap doors covered, closing all the openings as tightly as possible. (c) Any modifications of the foregoing instructions with the view of securing partial opening or closing of ventilators must be explicitly stated in the instructions given and are to be strictly carried out. Ventilators once adjusted are not to be changed except by special instructions. The carriers assume no responsibility for ventilation of Bananas or Pineapples beyond a compliance with instructions issued by shippers or consignees.

PROTECTION AGAINST FREEZING.

Rule No.	
	TEMPERATURE AT WHICH PERISHABLE COMMODITIES SHOULD BE PROTECTED AGAINST FREEZING.
200	Regardless of the fact that carriers operate insulated cars, intended for the safe transportation of perishable freight, certain commodities (such as those enumerated below) are liable to be damaged by freezing, at the temperatures shown. Carriers will not assume any responsibility for loss or damage to such goods by freezing. If special protection is given by means of artificial heat, Rules Nos. 205 to 222, inclusive, will govern.
201	**Fruits, Vegetables, Liquids, Eggs, and Cheese,** loaded in refrigerator cars, are liable to be damaged by frost when the outside temperature is zero or lower. Shipments should be protected by artificially heating cars, or otherwise, in accordance with the rules and regulations of individual carriers.
202	**Bananas** are more susceptible to frost than any other perishable commodity and, therefore, should be given special attention. The inside temperature of cars containing bananas should never be allowed to go below fifty-five (55) degrees above zero.
203	Cars containing **fresh meats, fresh fish, or dressed poultry,** should not be heated, but should be kept well iced with crushed ice and salt (in accordance with instructions on billing) to protect against freezing.
204	Cars loaded with **butter** should not be heated.
205	**Messengers' Instructions:**—When cars are accompanied by messengers, their instructions will be followed as to protection against freezing. (See Rule No. 350.)
	PREPARATION OF CARS.
206	The general preparation of cars will be in accordance with Rules Nos. 9, 10 and 11. In addition to this, great care must be exercised to remove any inflammable material from the tanks of cars which are to be heated by stoves placed in the tanks.
207	**Carding Cars:**—All cars artificially heated must be carded on both sides: "**Heated Car.**" These cards must be removed when heaters are taken out of car.

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PROTECTION AGAINST FREEZING.—Continued.

Rule No.	
	PROTECTION OF DELAYED, DETOURED, BAD ORDER AND WRECKED CARS.
221	When a car of perishable freight is held for any reason, it is the duty of agent or other employe in charge to see that contents of car is protected. Car and contents must be examined on arrival and a record made of condition, including any visible damage from frost, except that no car must be opened solely for inspection of contents if temperature is below freezing. Contents of car, if exposed, must be protected by use of tarpaulins when available. (See Rule No. 325.)
222	**Frosted Shipments.**—When shipments of fruit or vegetables in refrigerator cars have been frosted, care must be taken not to draw out the frost too rapidly. The safest way is, first, to fill the ice-bunkers with ice and then place the car in a heated building, where the ice will melt gradually, which will slowly draw out the frost. The side doors of cars should be opened a few inches immediately after cars are housed, so as to allow the warm air to enter the car gradually.

LESS THAN CARLOADS—SCHEDULED, PICK-UP CARS, ETC.

Rule No.	
	DEFINITIONS.
250	**Less than Carload Freight** is any shipment properly way-billed at the less-than-carload freight rates applicable as per classifications, tariffs, circulars or other published issues of the carriers.
251	**Scheduled Cars** are those operated by carriers from station to station, on published schedule, accommodating less-than-carload perishable shipments and providing protection against heat or cold.
252	**Meat Peddler or "Route" Cars** are those handled by carriers for less-than-carload perishable freight of one consignor only, over a specified route designated by such consignor and which are protected against heat or cold under shipper's instructions and expense.
253	**"Pick-up" cars** are those regularly operated by carriers over a specified route, to pick up less-than-carload perishable freight for concentration at a final point, from whence the freight is subsequently reforwarded.
254	**Special Cars** are those furnished by carriers for protection of less-than-carload perishable freight, under revenue and weight restrictions, for one consignor and between two specified stations only.
	PREPARATION OF CARS FOR LOADING.
255	(See General Rules Nos. 9, 10 and 11.)
	CARDING.
256	All scheduled, peddler, "pick-up" and special cars for protection of less-than-carload perishable freight must be properly carded on both sides in accordance with instructions of individual carriers.
	PROTECTION OF CONTENTS.
257	**Icing and Re-icing of Less-than-carload Perishable Freight.**—(See local rules of individual carriers.)
258	**Ventilation of Less-than-carload Perishable Freight.**—(See Ventilation Rule No. 156.)
259	**Heating of Less-than-carload Perishable Freight.**—(See "Protection against Freezing," Rule No. 208.)
260	**Use of Scheduled Cars.**—Agents will see that all shippers are fully advised as to the days that refrigerator cars are regularly scheduled, and request them to make their shipments on those days.
	CONSIGNMENTS RECEIVED FROM SHIPPERS OR CONNECTING LINES WHEN REFRIGERATOR SERVICE CANNOT BE GIVEN.
261	**On other than Scheduled Days or to Points not Served.**—Agents will not accept small shipments of perishable freight on any days that the regularly scheduled refrigerator cars are not run, nor on any day for points to which no refrigerator service is provided, unless shippers make a written demand to forward the property in common box-cars. In such cases a notation must be made on shipping receipt and way-bill, as follows: "Forwarded in common box car at owner's risk."
262	**To Points Served Part Way.**—When perishable freight is offered at a station from which scheduled refrigerator cars are run for stations that scheduled line cars do not reach, agent must make notation on shipping receipt and way-bill, as follows: "No refrigerator car protection beyond ....." (showing station in blank space where freight will be taken out of scheduled car.)
263	**From Stations not Served by Schedules.**—Agents accepting perishable freight at points from which scheduled cars are not run, will see that shipments are loaded on trains which will make proper connection with scheduled cars at junctions or divisional points. If in doubt, consult train master. Agent must make notation on shipping receipt and way-bill, as follows: "Forwarded in common box-car at owner's risk, to be transferred at ....., to scheduled line No....."

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INTERCHANGE BETWEEN CONNECTING LINES.

Rule No.	
300	**Conductors to Give Advance Notice.**—Conductors having carload perishable freight in their trains for delivery to connecting lines will give junction agents sufficient advance notice by wire of all such cars and route via which they are consigned. Whenever possible, agents will advise connections of such freight and probable time of delivery to them.
301	**Inspection of Cars.**—All cars loaded with perishable freight received from connecting lines must be inspected at junction point at which received, with respect to ice-tanks, ventilators, heating devices or other special appliances for temperature protection. (See, also, Inspection Rules Nos. 127, 161 and 218.)
302	**Inspection of Perishable Freight** interchanged between connecting lines will be in accordance with General Rule No. 15.
303	**Receipting to Connecting Lines.**—Receipts to connecting lines for carload perishable freight must be in accordance with instructions to junction agents, under General Rule No. 30; also rules as follows: Rule No. 103—Refrigeration. Rule No. 153—Ventilation. Rule No. 212—Protection against Freezing.

TRANSFERRING SHIPMENTS IN TRANSIT.

Rule No.	
325	**Transferring Perishable Freight.**—As far as possible, the transferring of perishable freight from one car to another, for any cause other than account wrecked or bad order cars, should be avoided. In case it becomes necessary for any reason to transfer carload perishable freight (see special rules following), the employe in charge must immediately notify by wire all interested officials, including officer in charge of refrigerator service. Telegram must give full information, kind of freight, full way-bill reference, names of shipper and consignee, nature and extent of damage to the car and contents, and number and initials of car into which shipment will be transferred. See rules as follows: Rule No. 129—Refrigeration. Rules Nos. 155, 164—Ventilation. Rule No. 221—Protection against Freezing. Rule No. 281—Less than Carloads.
326	**Class of Car for Transfer.**—The car into which a shipment of perishable freight is transferred should be similar and of the same class as the original car, if it is possible to secure such. This applies to refrigerated, ventilated or heated service
327	**Preparation of Cars before Transfer.**—Preparation of cars into which perishable freight is to be transferred should be exactly in accordance with rules herein on preparation of cars, governed by the class of service under which freight is moving. (See Rules Nos. 9, 10 and 11; also rules as follows: Rule No. 100—Refrigeration. Rule No. 150—Ventilation. Rules Nos. 206-210—Protection against Freezing. Rule No. 255—Less than Carloads.)
328	**Stowing Freight.**—It is extremely desirable that freight be loaded at transfer point exactly as loaded at point of origin. Employe in charge should carefully examine method of bracing, stripping and stowing previously used and follow the same plan in transferring, but **do not load** the freight **solidly** in the car. Provide proper air passages by means of strips and braces. If care is used, the loading material from original car can be made available. If time permits, freight should be loaded in same order as found in original car. This is particularly desirable in transferring deciduous fruits.
329	**Use of Tarpaulins.**—Where tarpaulins are available, they should be used to protect freight against dirt, rain, cold, heat, etc., while making transfers, and in the absence of such protection every possible care must be used to load the freight in a clean and dry condition.
330	**Telegraphing Proper Officials.**—Employes in charge, regardless of where transfers may be made, must not fail to wire all proper officials. In many cases heavy losses can be avoided by proper observance of this rule.
331	**Transfer of Bananas and Pineapples.**—In case of accident necessitating the transfer of **Bananas**, report by wire must be made to Trainmaster; also to the officer in charge of refrigerator service of carrier (on whose rails car is at that time), stating the nature and extent of damage to the cars and contents, with report of the action taken regarding the handling and forwarding. When Bananas are transferred they are, as a rule, more or less injured by being bruised, which causes them to reach destination in bad condition, in many cases overripe and worthless, causing heavy claims for damages. It is, therefore, absolutely necessary to avoid transferring when possible, and have the cars repaired without transfer, as, for the reasons given, there should be no handling of this class of fruit that can be avoided. When transfer cannot be avoided it must be done promptly and with great care, and the fruit placed in the same position as originally loaded by the shipper. Conductors should confer with the proper official, if possible, before transferring, as to the best way of doing it, but in all cases the reports above referred to must be made. **Pineapples** are crated and boxed, which protects them from bruising or damage if handled carefully. There is no objection to their being transferred when cars break down in transit, and transfer can be made quicker than the car can be repaired; but they should be handled carefully, and the car into which transfer is made should be in good, clean condition so as not to taint the fruit, and the ventilators should be adjusted in the same manner as the car in which the freight is received.

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MESSENGERS.

Rule No.	
350	**Messengers with Perishable Freight.**—Messengers traveling in charge of perishable shipments must be assisted to the fullest extent in protecting the interests of the owners and of the railroad, and their instructions as to refrigeration, ventilation or method of transferring, will govern on cars in their care regardless of way-bill instructions, but messengers' instructions must be endorsed, signed and dated by them on the way-bills, and the facts duly recorded by the Conductor or Agent in whose custody the way-bills may be when so endorsed.

RECORDS OF SERVICE.

Rule No.	
375	**Records of Service.**—Agents and other designated employes at points of origin, division terminals, icing or inspection stations, junction points and destinations, should make and preserve in permanent form the following information in connection with each car of perishable freight: (a) Regular way-bill: Series, number and date. (b) Card-bill: Series, number and date. (c) Car number and initial. (d) Name of loading point. (e) Name of billing point. (f) Name of billed destination. (g) Name of final destination. (h) Commodity: (Contents). (i) Instructions on way-bill, in detail, as to icing, salting, ventilation; heating or special. (j) Outside temperature on arrival and departure. (k) Arrival: Train number, date and hour. (l) Departure: Train number, date and hour. (m) Position of plugs, ventilators, hatches or other devices on arrival and departure. (n) Seals: All seals on all openings, on arrival and departure. (o) Amount of ice in tanks, on arrival and departure. (p) Amount of ice furnished: each icing shown separately; date and hour. (q) Amount of salt, if any, furnished with each icing. (r) How and to whom ice and salt is charged. (s) Icing way-bill, if any, full record. (t) Condition of drains, pans, pipes, etc., on arrival and departure. (u) Inspection, if any, of freight (contents). (v) Record of delivery to consignee, to connecting line, or of reconsignment or otherwise. Full record of transfer receipt. (w) Record of unusual circumstances in connection with car or shipment, including apparent neglect at previous icing or inspection stations.
376	**Records of Heating.**—When artificial heat is supplied (in accordance with rules herein) to cars containing perishable freight, a complete record of the heating must be made by the Agents or employes having charge of such cars. When cars are held at a given point, under artificial heat, the outside and inside temperature must be taken and recorded three times each day, at 7 A. M., 12 noon and 6 P. M. The record must also show date and hour that heaters are placed in cars, location of heaters in cars, and date and hour heaters are removed. Record should be made also of date and hour when side-doors of cars are opened at any point; as well as of care given to heating apparatus.
377	**Records of Inspection.** (See Rule No. 375.) (a) **Cars.**—See Rule No. 375 (t), and Rules as follows: Rule No. 11—General Inspection. Rule No. 127—Refrigeration. Rule No. 161—Ventilation. Rule No. 218—Protection against Freezing. (b)—**Freight.**—See Rule No. 375 (u), and Rules as follows: Rules Nos. 13-21, 32—General Rules. Rule No. 302—Interchange.
378	**Records of Delays, Bad Order Cars, Wrecks, Detours and Transfers.**—Records of delays, bad order and wrecked cars should be made in accordance with Rule No. 375; also Rules as follows: Rule No. 32—General Rule. Rules Nos. 128, 129—Refrigeration. Rules Nos. 160, 162, 164—Ventilation. Rule No. 221—Protection against Freezing. Rule No. 281—Less Carloads.
379	**Records of Diversions and Reconsignments.**—Records of diversions and reconsignments should be kept in accordance with instructions issued by official in charge of such service, of individual carriers.

INFORMATION TO SHIPPERS, CONSIGNEES AND CONNECTING LINES.

390	**To Shippers or Consignees.**—Agents or other employes must not undertake to answer inquiries regarding the service-record of perishable freight. Such inquiries should be referred to the officer in charge of refrigerator service.
391	**To Carriers.**—Agents may answer inquiries from carriers relative to service-records, when so authorized by the rules and regulations of the respective carriers.

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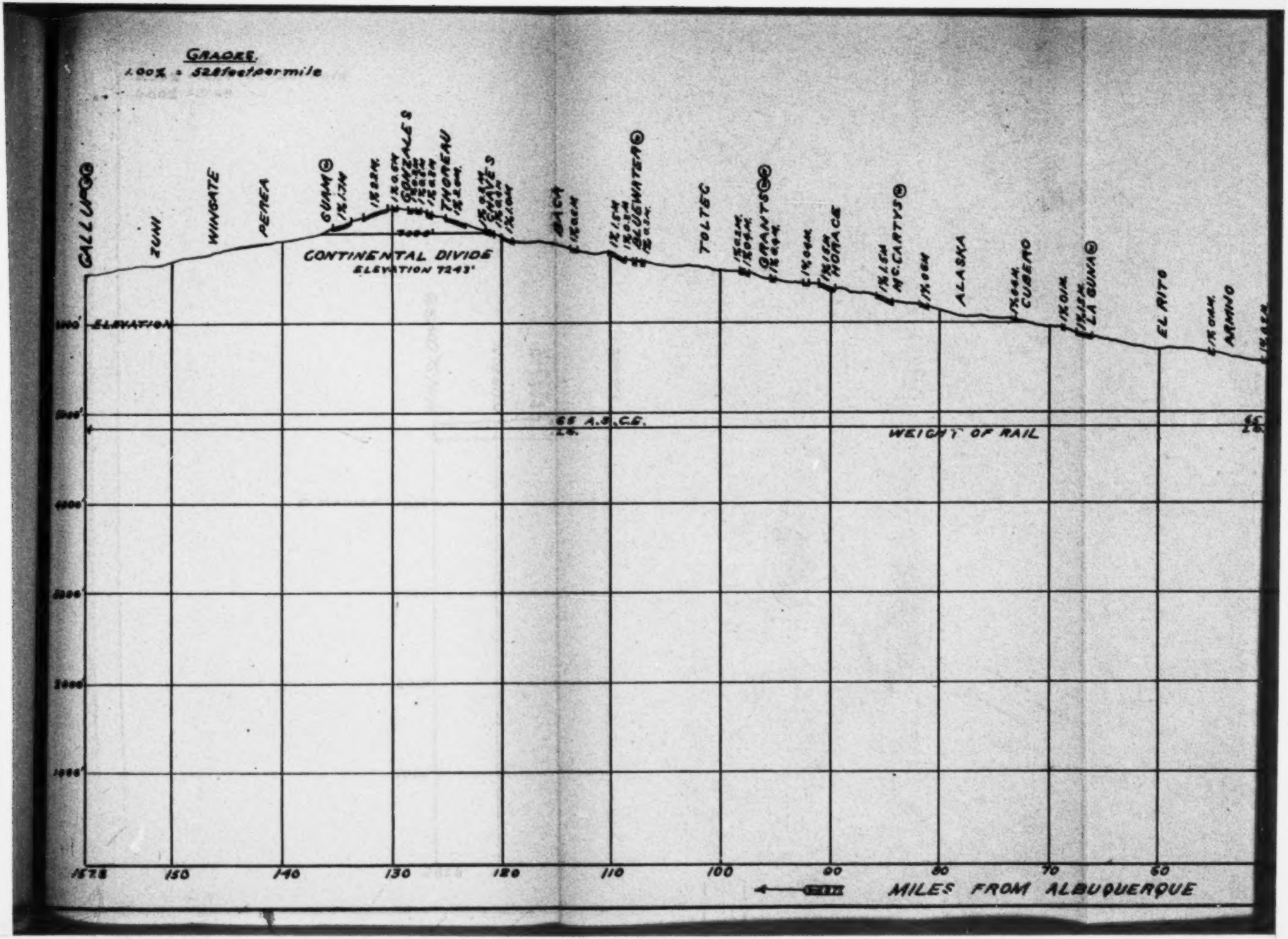
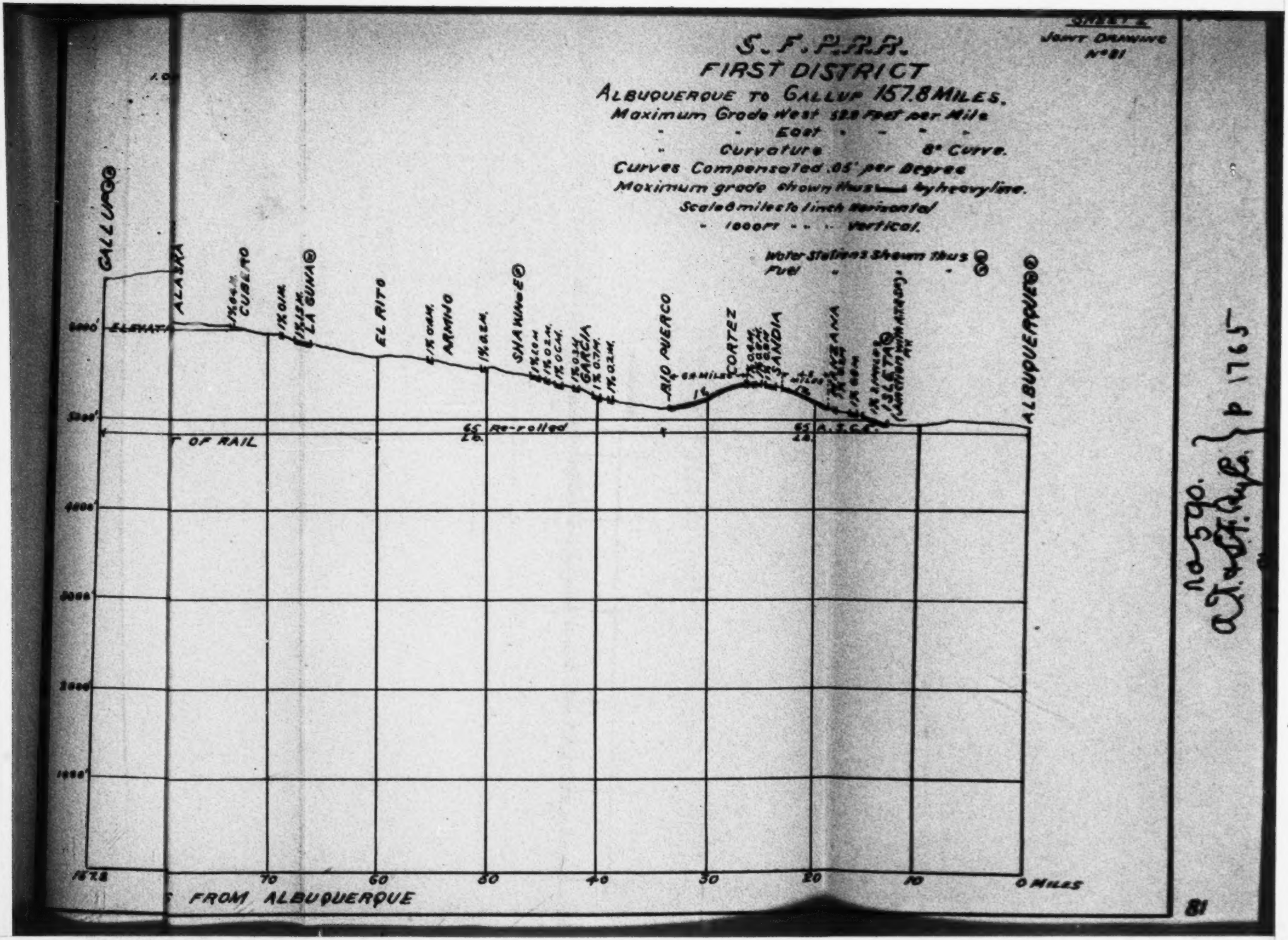
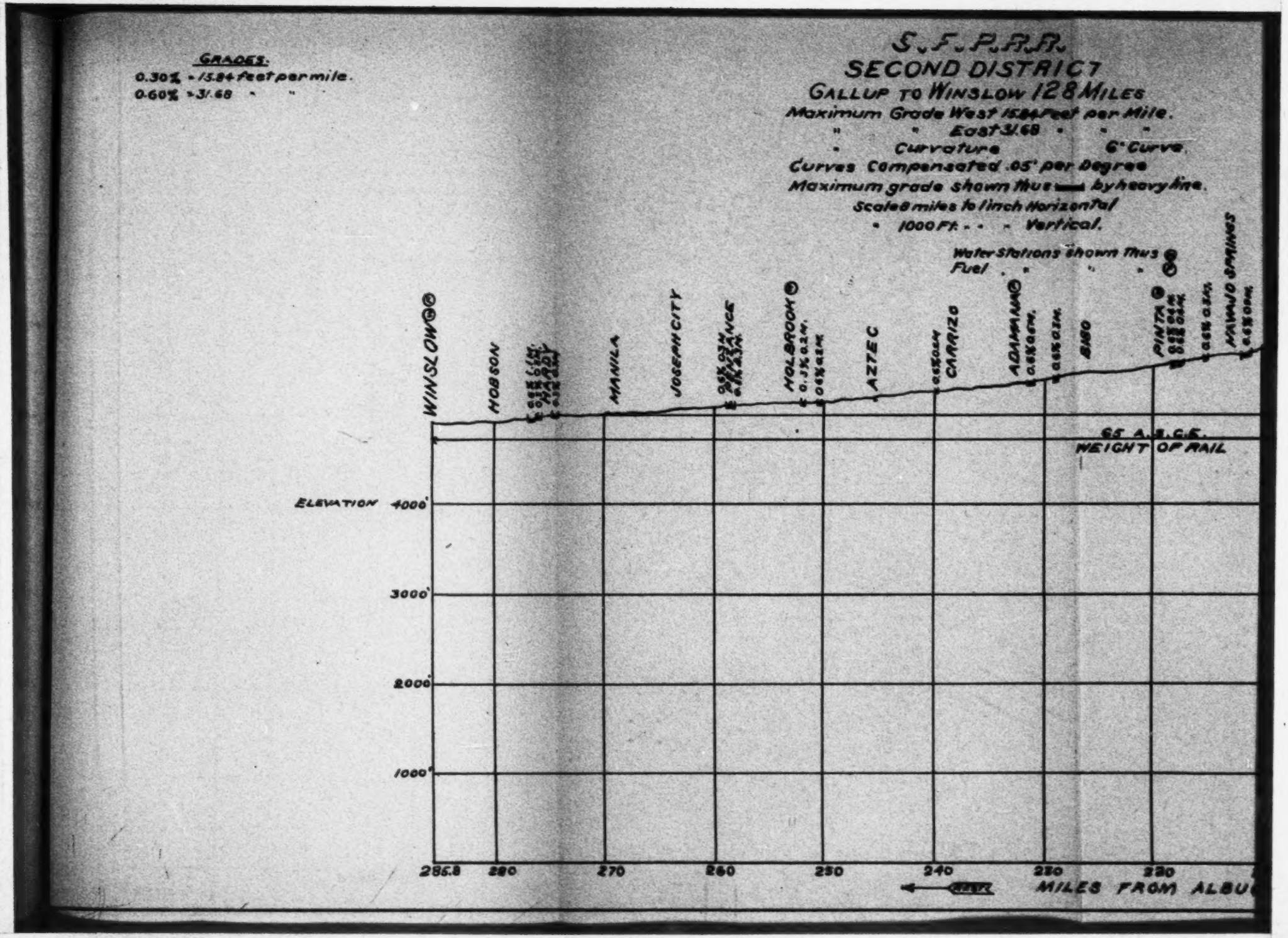

GRADES.
1.00% = 528 feet per mile
GALLUP
ZUNI
WINGATE
PEREA
GUAM
GONZALES
THOREAU
CHAVES
BACA
BLUEWATER
TOLTEC
GRANTS
HORACE
McCARTYS
ALASKA
CUBERO
LA GUNA
EL RITO
ARMIJO
CONTINENTAL DIVIDE
ELEVATION 7243'
ELEVATION
65 A.S.C.E.
WEIGHT OF RAIL
157.8
150
140
130
120
110
100
90
80
70
60
MILES FROM ALBUQUERQUE


S. F. P. R. R.
FIRST DISTRICT
ALBUQUERQUE TO GALLUP 157.8 MILES.
Maximum Grade West 52.8 Feet per Mile
" " East " " " "
" Curvature 8° Curve.
Curves Compensated .05' per Degree
Maximum grade shown thus by heavy line.
Scale 8 miles to 1 inch Horizontal
" 1000 ft " " Vertical.
Water Stations Shown Thus
Fuel "
SHEET 2.
JOINT DRAWING
No 81
GALLUP
ALAMEDA
CUBERO
LA GUNA
EL RITO
ARMINO
SHAWNEE
GARCIA
RIO PUERCO
CORTEZ
SANDIA
ALBUQUERQUE
ELEVATION
T OF RAIL
65 lbs Re-rolled
65 lbs A.T.&S.F.
157.8
70
60
50
40
30
20
10
0 MILES
FROM ALBUQUERQUE
P 1765
81


S.F.P.R.R.
SECOND DISTRICT
GALLUP TO WINSLOW 128 MILES
Maximum Grade West 15.84 Feet per Mile.
" " East 31.68 " " "
" Curvature 6° Curve.
Curves Compensated .05' per Degree
Maximum grade shown thus by heavy line.
Scale 8 miles to 1 inch Horizontal
" 1000 Ft. " " Vertical.
Water Stations shown thus
Fuel " " "
GRADES.
0.30% = 15.84 feet per mile.
0.60% = 31.68 " "
WINSLOW
HOBSON
HARDY
MANILA
JOSEPH CITY
PENZANCE
HOLBROOK
AZTEC
CARRIZO
ADAMANA
BIBO
PINTA
NAVAJO SPRINGS
65 A.S.C.E.
WEIGHT OF RAIL
ELEVATION
4000'
3000'
2000'
1000'
285.8
280
270
260
250
240
230
220
MILES FROM ALBU

SHEET 3
JOINT DRAWING
No 21

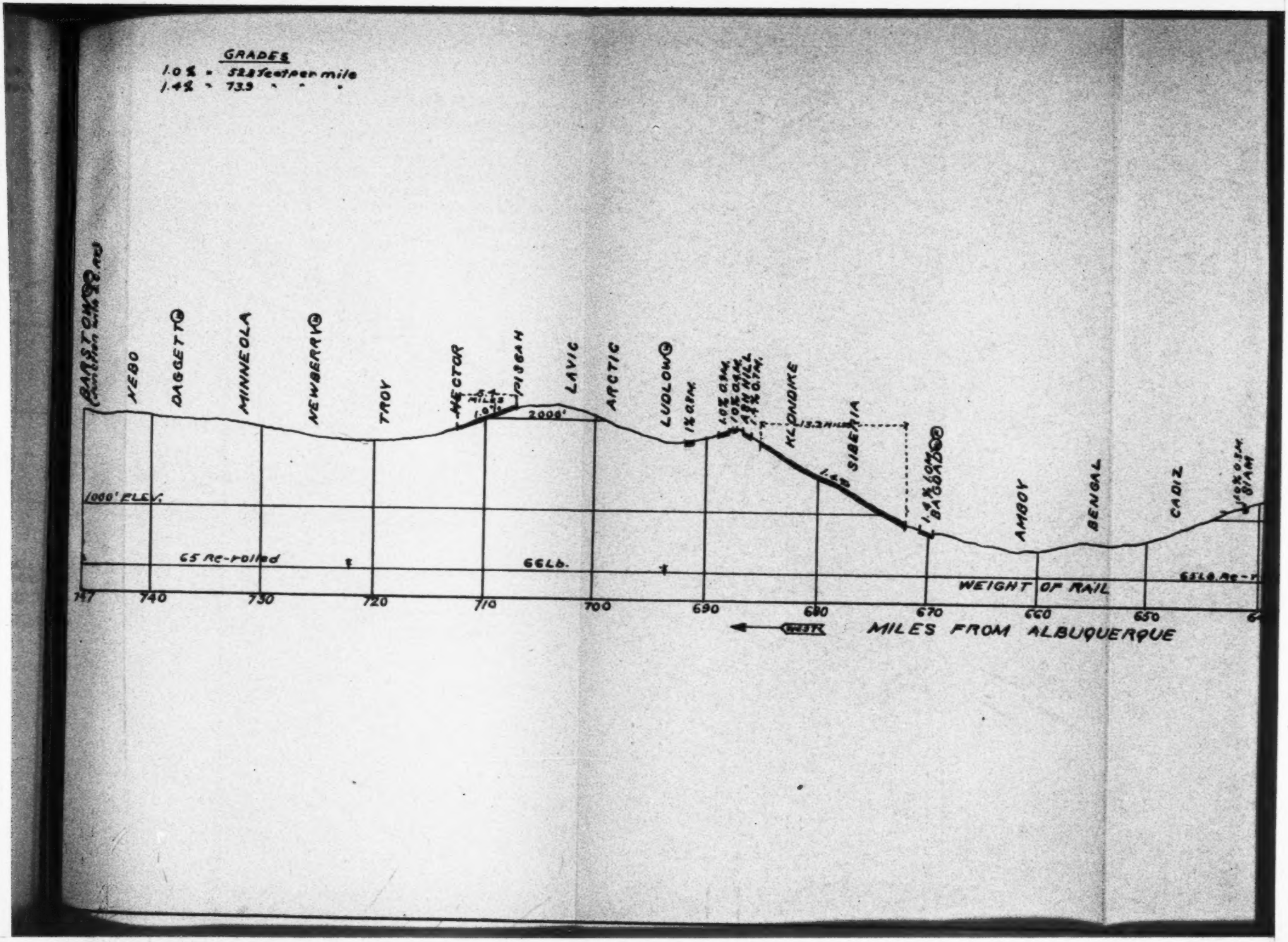
T. P. R. R.
D DISTRICT
INSLOW 128 MILES
West 15.84 Feet per Mile.
East 31.68 " "
ature 6° Curve.
sated .05' per Degree
shown thus ▬ by heavy line.
s to Inch Horizontal
t. - - - Vertical.

Water Stations shown thus ⊕
Fuel " " "

CARRIZO
ADAMANA ⊕ 0.6% 0.6% CON.
0.6% 0.3% CON.
BIBO
PINTA ⊕ 0.6% 0.3% 0.6% 0.4% CON.
0.6% 0.3% CON.
NAVAJO SPRINGS
0.6% 0.0% CON.
0.6% 0.2% CON.
0.6% 0.8% CON.
0.6% 0.7% CON.
CHAMBERS
0.6% 0.2% CON.
GINDERS
0.6% 0.6% CON.
0.6% 0.4% CON.
PUERINO
0.6% 0.7% CON.
0.6% 1.2% CON.
HOUCK ⊕
0.6% 1.1% CON.
ALLANTOWN
0.6% 1.2% CON.
0.6% 0.2% CON.
0.6% 0.2% CON.
0.6% 0.2% CON.
0.6% 1.2% CON.
LUNA
0.6% 0.6% CON.
0.6% 0.0% CON.
MANUELITO
0.6% 0.3% CON.
0.6% 0.6% CON.
0.6% 1.1% CON.
WEST YARD
GALLUP ⊕

65 A.S.C.E.
WEIGHT OF RAIL

240 230 220 210 200 190 180 170 160 157.8
MILES FROM ALBUQUERQUE

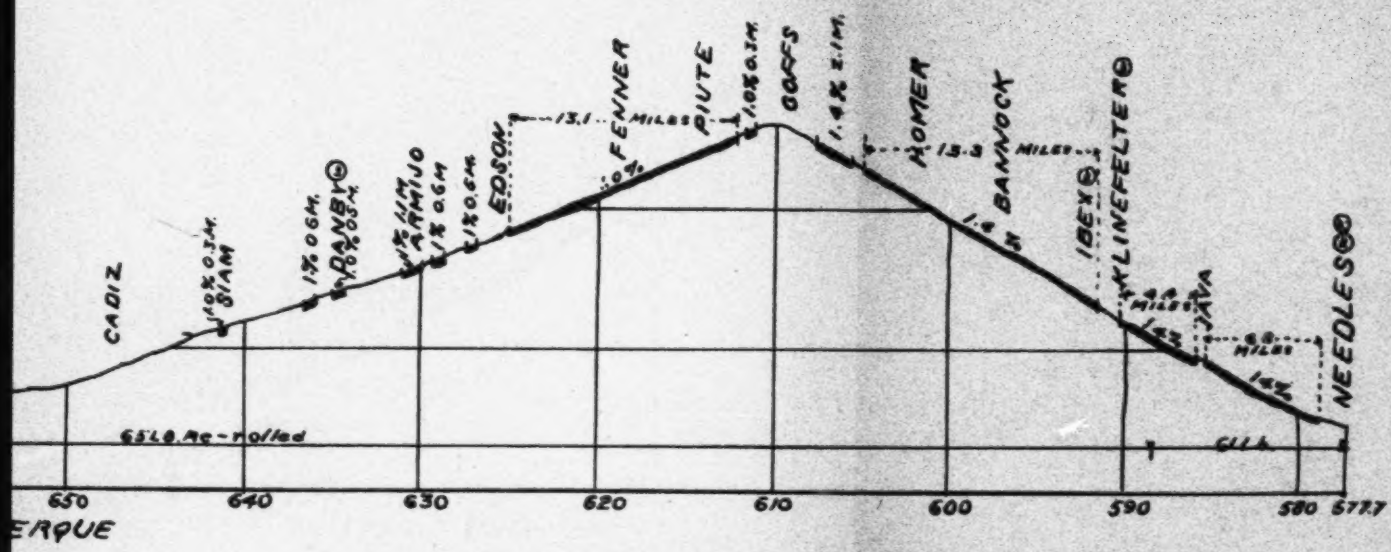

GRADES
1.0% = 52.8 feet per mile
1.4% = 73.9 " " "
BARSTOW
NEBO
DAGGETT
MINNEOLA
NEWBERRY
TROY
HECTOR
PISGAH
LAVIC
ARCTIC
LUDLOW
KLONDIKE
SIBERIA
BAGDAD
AMBOY
BENGAL
CADIZ
1000' ELEV.
65 Re-rolled
66 Lb.
WEIGHT OF RAIL
747
740
730
720
710
700
690
680
670
660
650
WEST
MILES FROM ALBUQUERQUE

SHEET 6
JOINT DRAWING
No 81

S. F. P. R. R.
FIFTH DISTRICT
NEEDLES TO BARSTOW 169.3 MILES.

Maximum Grade West 73.9 Feet per Mile.
" " East 52.8 " " "
" Curvature 10° Curve.
Curves Compensated from .03 to .05 per Degree
Maximum grade shown thus ▬ by heavy line.
Scale 8 miles To 1 inch Horizontal.
" 1000 Ft " " " Vertical.

Water Stations shown Thus ⊙
Fuel " " " ⊙



HELPER SERVICE

Class of Eng.	Needles to Goffs Tonnage Rating	Bagdad to Goffs Tonnage Rating	Bagdad to Lavic Tonnage Rating
439	400	550	400
468	450	600	450
649, 1000 & 1050	625	790	625
769	650	875	650
825 & 789 (Vauclain)	775	975	775
900	1160		
990	760	940	760

No 690
A.T. & S.F. Ry Co
w
Mid Etal
2 hrs

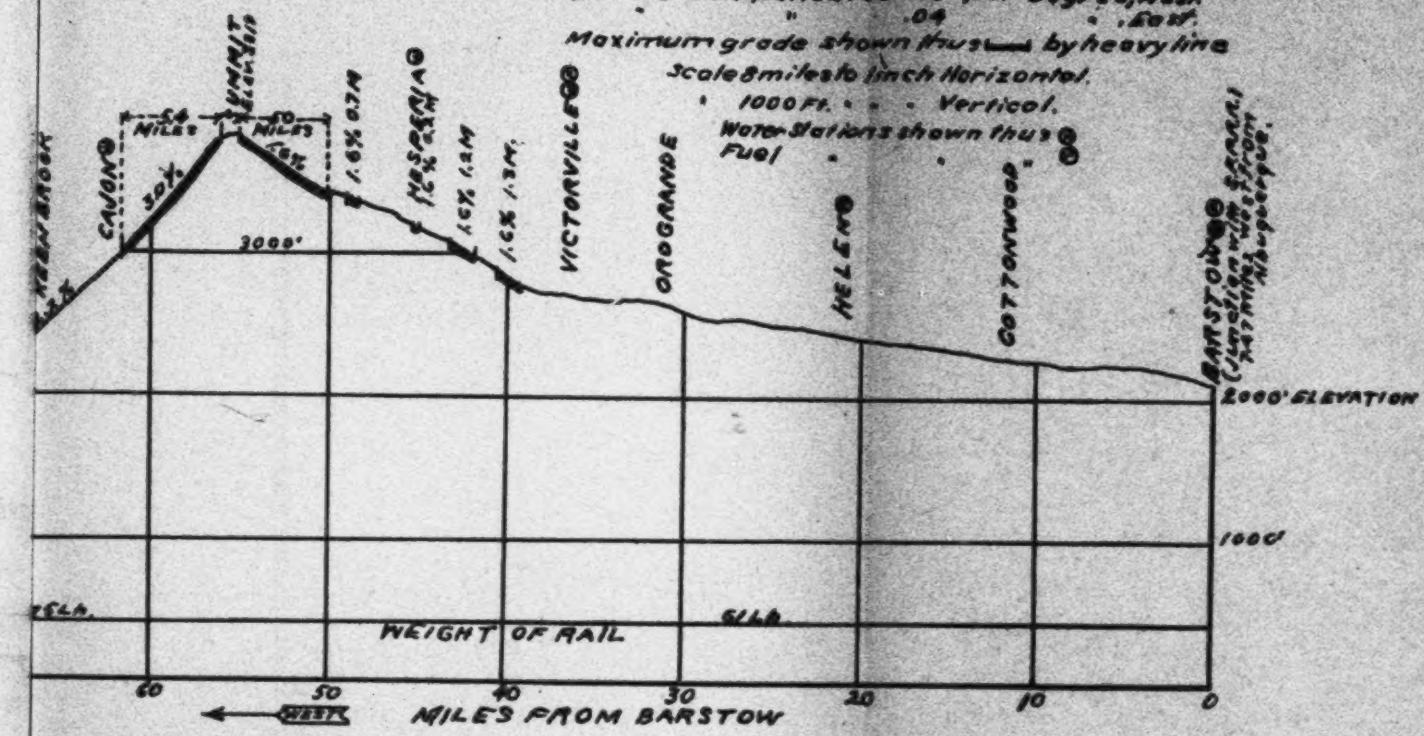
81

SHEET 12
JOINT DRAWING
No 81

1770

S. C. RY.
FIRST DISTRICT
BARSTOW TO SAN BERNARDINO 81.1 MILES.

Maximum Grade West 84.6 Feet per Mile
" " East 158.4 " "
" Curvature 10° Curve.
Curves Compensated .05' per Degree, West
" " .04 " East.
Maximum grade shown thus ▬ by heavy line
Scale 8 miles to 1 inch Horizontal.
" 1000 Ft. " " " Vertical.
Water Stations shown thus ⊕
Fuel " " ⊕



HELPER SERVICE

...ILLE TO SUMMIT	SAN BERNARDINO TO SUMMIT
...WAGE RATING	TONNAGE RATING
400	200
500	220
625	300
515	250
525	220
675	350
725	400
900	450
1250	700
1150	650
875	925

No 590 A.T. & S.F. Ry Co. Usual. } p1770

1 to 30 mm

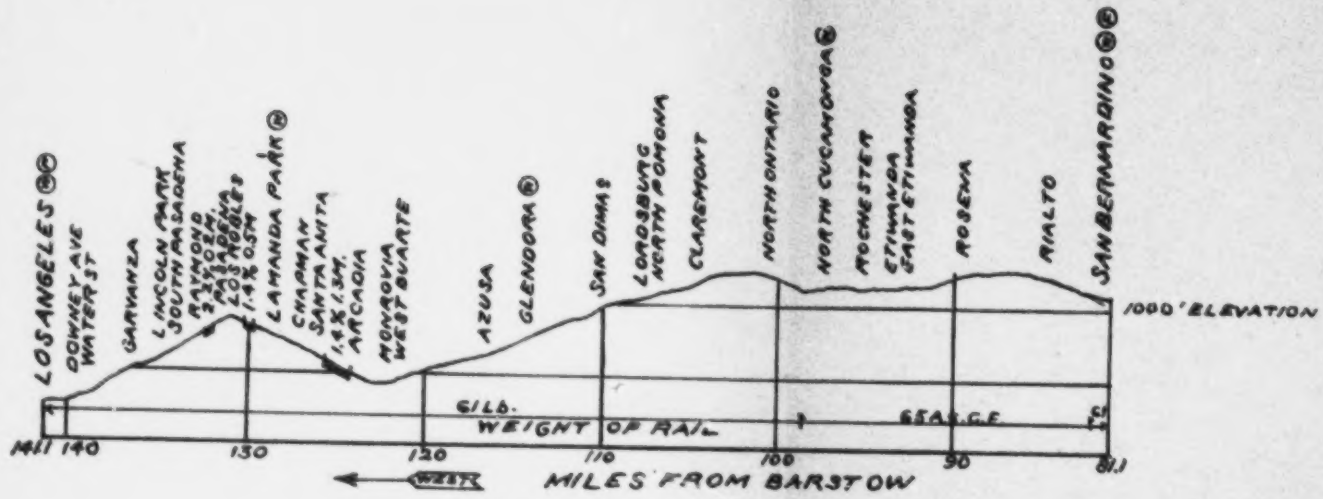
81

SHEET 13
JOINT DRAWING
No 81

1771

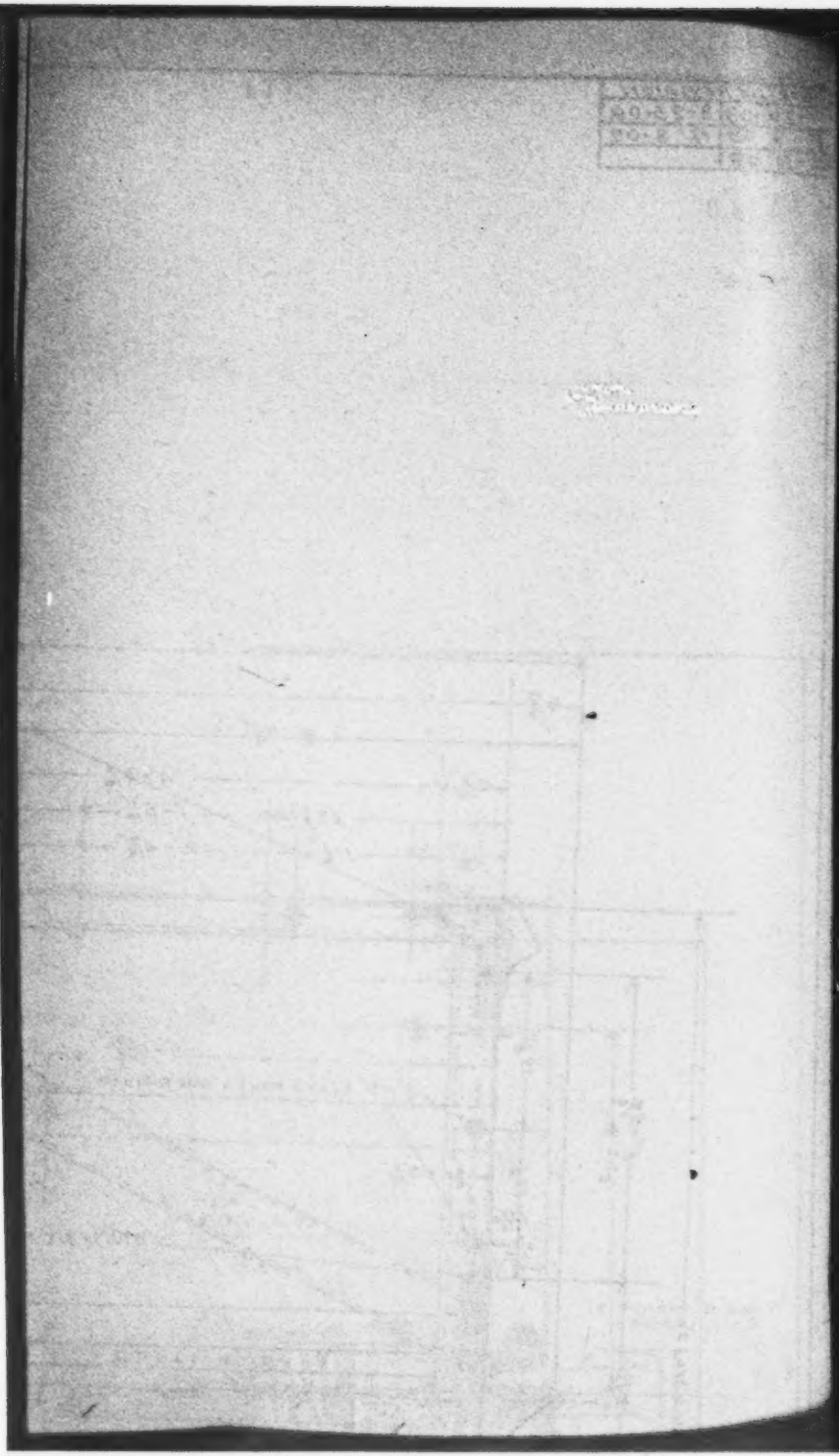
S. C. RY.
SECOND DISTRICT
SAN BERNARDINO TO LOS ANGELES 60 MILES.

Maximum Grade West 73.9 feet per Mile
" " East 116.2 " " "
" Curvature 10° Curve.
" Grade shown thus ▬ by heavy line.
Scale 8 miles to 1 inch Horizontal.
" 1000 Ft. " " " Vertical.
Water Stations shown thus (W)
Fuel " " " (F)



no 590
a.S.&S.F. Ry Co } #1111
v
U.S. Ital.

MAPS
TOO
LARGE
FOR
FILMING



1713–1773 *Stipulation Filed May 13, 1912, Excluding Certain Exhibits from Printed Record.*

In the United States Commerce Court.

No. 61.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al.
v.
UNITED STATES.

It is hereby stipulated and agreed, by and between the parties to the above entitled cause, by their respective solicitors, that the following exhibits adduced by the parties in Case No. 3000 before the Interstate Commerce Commission, viz:

Complainants' Exhibit No. 48, being the annual report of the Atchison, Topeka & Santa Fe Railway Company for 1909.

Defendants' Exhibit No. 1, being the Santa Fe Refrigerator Dispatch Circular No. 2-D and 27-*a*, containing rules and regulations governing the handling of perishable freight, effective May 15, 1909, 27-*a* being effective May 10, 1909, promulgated by the Railroad Refrigerator Service Association.

Defendants' Exhibit No. 8, being a blue print of a Pacific Fruit Express refrigerator car.

Defendants' Exhibit No. 16, being Circular No. 27 of the Railroad Refrigerator Service Association, effective July 1, 1908.

Defendants' Exhibit No. 53, being seven (7) blue prints of Santa Fe profiles of line.

And the following exhibits adduced before the Commission on the rehearing of said cause No. 3000, viz.:

Mortenson's Exhibits Nos. 1 to 9, inclusive, which are set out in full in the record on page- 1563, et seq.

Mortenson's Exhibit No. 10, which is a Pennsylvania Railroad map.

* * * * * * *

2b need not be printed in the record in the above entitled cause; and that sufficient copies thereof, not less than fifteen (15), shall be furnished by counsel for the petitioners to the Clerk of the Court for the use of the Court and the counsel on the hearing of the said cause and that such copies when so furnished may be used to all intents and purposes as though printed in the record.

C. W. DURBROW,
H. A. SCANDRETT,
ROBERT DUNLAP,
T. J. NORTON,
Solicitors for Petitioners.
BLACKBURN ESTERLINE,
Special Assistant to the Attorney General, for the United States.
P. J. FARRELL,
Solicitor Interstate Commerce Commission,
Per E.
ASA F. CALL,
Solicitor for Arlington Heights Fruit Company,
Per E.

1774 *Journal Entry.*

Proceedings of February 26, 1913.

No. 41.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al., Petitioners.

vs.

THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Thereupon said cause came on before the Court for final hearing upon the merits and the arguments of counsel were concluded, Mr. T. J. Norton and Mr. H. A. Scandrett appearing on behalf of the petitioners, Mr. Blackburn Esterline, Special Assistant to the Attorney General, on behalf of the United States, Mr. P. J. Farrell on behalf of the Interstate Commerce Commission and Mr. William E. Lamb on behalf of the intervening shippers. Thereupon the cause was taken under advisement by the Court.

1775 United States Commerce Court, February Session, 1913.

No. 41.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, Southern Pacific Company, and San Pedro, Los Angeles & Salt Lake Railroad Company, Petitioners,

v.

THE UNITED STATES OF AMERICA, Respondent; INTERSTATE Commerce Commission, Arlington Heights Fruit Company, et al., Interveners.

On Final Hearing on Pleadings and Proofs.

(Filed March 31, 1913.)

For opinion of Interstate Commerce Commission see 20 I. C. C. Rep. 106, and 23 I. C. C. Rep. 267.

Mr. T. J. Norton and Mr. H. A. Scandrett, with whom Mr. Robert Dunlap, Mr. C. W. Durbrow, and Mr. Gardner Lathrop were on the brief, for petitioners.

Mr. Blackburn Esterline, Special Assistant to the Attorney General, for the United States.

Mr. P. J. Farreli for the Interstate Commerce Commission.

1776 Mr. William E. Lamb, with whom Mr. Asa F. Call was on the brief, for the intervening shippers.

Before Knapp, Presiding Judge, and Hunt, Carland, and Mack, Judges.

(March 31, 1913.)

CARLAND, *J.*:

The questions to be decided in this case arise in this way: The petitioners, as well as other carriers, parties to the orders of the Interstate Commerce Commission hereinafter referred to, are and have been engaged in transporting from points in southern California to various points in the United States citrus fruits in carload lots under refrigeration as well as under ventilation. At certain times of the year, refrigeration is necessary to protect such shipments. Under standard refrigeration the oranges are loaded into a refrigerator car before either the fruit or the car has been artificially cooled, the boxes being so packed as to allow a free circulation of air between and around them. After being loaded, the car is taken to some gathering point, usually San Bernardino, upon the line of the Santa Fe and Colton upon the line of the Southern Pacific, when the shipments originate in southern California, and the bunkers are there filled with ice. As the car journeys eastward, the bunkers are opened from time to time and replenished with additional ice.

The charges for refrigeration from California points in case of oranges and lemons are, per standard car, to the Missouri River,
\$60; to Chicago and similar points, \$62.50; to Buffalo and
1777 Pittsburgh, \$72.50; to New York, \$75, and to Boston, \$77.50. The Interstate Commerce Commission found that the cost of refrigeration to Chicago over the Santa Fe was \$55 per car, and itemized said cost as follows: Cost of ice, \$30; cost of repairs to bunkers, \$5; hauling of ice, \$20; and upon complaint of the Arlington Heights Fruit Exchange et al. v. Southern Pacific Company et al. (20 I. C. C. Rep., 106), found the charges for the transportation of oranges and lemons from California points under standard refrigeration to the points hereinbefore mentioned were reasonable.

On or about July 5, 1909, petitioners amended their refrigeration rules so as to provide as follows:

"On all carloads of citrus fruit precooled and preiced, or preiced by shipper, offered for shipment with instructions 'Do not reice en route,' a charge of \$30 per car of 32,000 pounds or less will be made, excess weight to be charged for at 9.375 cents per 100 pounds. On all cars handled under this rule, shipper will sign the following release, which must in all cases appear on shipping ticket and bill of lading and be copied on waybill by agent:

"The giving and acceptance of these special instructions from the shipper releases the initial carrier and its connections from all liability for damages caused by nonicing in transit or at destination." In event any such car is reiced in transit, the above charge of \$30 will be cancelled and the regular refrigeration rate applicable from
San Bernardino or Los Angeles, Cal., to final destination, as
1778 shown in this tariff, will apply and must be added to the waybill for collection in the usual manner."

We take from the report of the Commission in the case above cited the following description of precooling and preicing, referred to in the above amended rule:

"The system of refrigeration known as precooling, which is essentially different from the standard refrigeration just considered, grew out of experiments conducted by the United States Department of Agriculture into the handling of oranges. Those researches demonstrated that decay in oranges was due mainly to mechanical injury in the handling, and that if this could be avoided refrigeration was not necessary to prevent decay, but only to preserve the appearance of the fruit. While the greatest care is now exercised in the handling of the orange from the tree to the car, abrasions of the skin can not be entirely avoided, and the experiments above referred to further demonstrated that in case of such injury the result was minimized by cooling the fruit at the earliest possible moment and maintaining thereafter a low temperature. It was more difficult to arrest and control the process of decay when it had once fairly set in than it was to check it at its inception.

"Precooling grew out of these investigations of Prof. Powell and was tried by him in the course of his experiments. In actual practice it takes two forms, which may be termed precooling by the shipper and precooling by the railroad. These two methods are essentially different and must be understood in order to intelligently appreciate the question presented.

"In precooling by the shipper the basic idea is to bring the fruit under the influence of a low temperature at the earliest pos-
1779 sible moment. The oranges are brought from the tree to the packing house and packed in a box which is immediately deposited in a cold room. Here the process of extracting the heat from the orange at once begins and gradually continues until at the end of from 24 to 48 hours all parts of the fruit in all parts of the box have been reduced to a uniform temperature of from 33° to 35° F. The box remains in this cold room at this temperature until it is to be loaded. The car is then connected with the room by a collapsible passageway and the oranges are taken directly from the cold storage to the car, where they are placed, not with air spaces between, as in case of ordinary refrigeration or ventilation, but close together. The bunkers of the car are filled with large blocks of ice especially intended for that purpose, and the bunkers and vents are now sealed up so as to make the car as nearly air-tight as possible. All this is done by the packer at the packing house, and the car is now delivered to the railroad with instructions to transport to destination without reicing and without breaking the seals.

"The cost of precooling and preicing a car in this manner, including interest on the investment and depreciation of the plant, is from $30 to $35, a fair average being, perhaps, $32.50."

On January 14, 1911, the Commission found that a charge of $30 per car as provided in the above amended refrigeration rule, when the citrus fruit was precooled and preiced by the shipper, was excessive and unreasonable, and ordered said charge to be reduced to

$7.50 per car, and that no more than said last named amount
1780 should be charged for a period of two years from April 15, 1911.

Whereupon petitioners, on May 4, 1911, filed their original petition in this court to annul said order reducing the charge of $30 on precooled and preiced citrus fruit. The case subsequently came on before this court on motion for a preliminary injunction, and the motion was denied, this court being of the opinion that the order of the Commission did not compel the carriers to permit shippers to precool and preice their fruit, and that the charge of $7.50 prescribed by the Commission was not unreasonable. Whereupon the Atchison, Topeka & Santa Fe Railway Company, the Southern Pacific Company, and the San Pedro, Los Angeles & Salt Lake Railroad Company filed with the Commission amendments to their tariffs, whereby what the carriers denominated the privilege of permitting the shippers of citrus fruit to precool and preice carload shipments was withdrawn; the carriers asserting in said amended tariffs that they had the exclusive right and control of furnishing and doing all icing and refrigeration of citrus fruits in all cases where shippers did not specifically request or instruct shipments to move solely under ventilation. Before said amendments became effective, however, the Commission entered orders from time to time suspending the operation and effect of said amendments, and a hearing upon said suspensions having been had, the Commission, on April 8, 1912 (23 I. C. C. Rep., 267), held that the amendments to petitioners' tariffs purporting to withdraw the right and
1781 privilege of precooling and preicing from the shipper were illegal and invalid, and ordered the petitioners to cancel said tariffs and supplements on or before May 20, 1912; and further ordered petitioners to continue in effect and maintain in force for a period of two years from April 8, 1912, a charge for precooling and preicing oranges transported in carloads from shipping and producing points in southern California to points in other States in the United States as designated in said above-mentioned tariffs, which should not exceed $7.50 per car.

Whereupon, on June 4, 1912, petitioners filed an amended and supplemental petition, which is the one now being heard, wherein this court is asked to annul and set aside the orders of January 14, 1911, and April 8, 1912, so far as they compel petitioners to permit shippers of citrus fruit to precool and preice their shipments, and in so far as they reduce the charge from $30 per car to $7.50 per car.

Criticism is made of the use of the words "precooling" and "preicing" in the report and orders of the Commission complained of. We think the confusion, if any, of the different terms is fully explained when we appreciate the fact that the Commission treated and held that the precooling and preicing of citrus fruit for shipment, by the shippers, was all one act—that is, that precooling and preicing was in fact a precooling of the shipment—and when the Commission speaks of the charge for precooling oranges it is to be understood that the word "precooling" includes the act of precooling as well as preicing. In order to free the case of undisputed
1782 questions, we quote from the brief of counsel for petitioners as follows:

"The carriers never claimed that the shippers have not a right to precool their fruit in their own warehouses. They have all along admitted that the shipper may do as he pleases with his fruit before offering it to the carrier for transportation, save only that it be tendered to the carrier in a condition not inherently unfit.

"So also the carriers have always admitted that a shipper may preice a shipment so long as he does it in his own package, as where he ices a box of fish or a keg of oysters, in which case the rate of transportation covers the entire package, including the ice as freight.

"But the carriers deny that the shipper has any right in law to ice or refrigerate the cars of the carriers and thus take out of the hands of the carriers a part of the transportation service which the first section of the interstate-commerce law requires them to provide, the 'refrigeration or icing' being specifically named in the law as included within the 'transportation' which the carrier is required to furnish."

Along the same line we may say that if the orders of the Commission do give rise to discriminations between shippers, that is a matter concerning which petitioners may not complain. (I. C. C. v. C., R. I. & P. Ry., 218 U. S. 85.) We also have no doubt but that the withdrawal of the right to precool and preice upon payment of $30 per car, was a new practice which affected the rate upon citrus fruits, and that the Commission had full authority
1783 under section 15 to make the orders suspending such practice.

We think it also clearly appears from the record that under the precooling and preicing rate established by the Commission, the carrier gets a greater revenue per car than under standard refrigeration, and also a greater revenue per ton of ice and load than under the standard refrigeration rate. The Commission found that in the case of a precooled and preiced shipment the average weight of ice carried from point of origin to destination was approximately 5,000 pounds; that under standard refrigeration, the average weight of ice carried in the bunkers was approximately 8,000 pounds. This would make the gross weight of the precooled and preiced shipment, including ice and load, 38,000 pounds; while the gross weight of the refrigerated shipment, including ice and load, is about 35,200 pounds. For transporting the former weight, the carrier, under the Commission's order, gets $387; for transporting the latter, under standard refrigeration rates, it gets $345.30. These figures are based with reference to shipments from California to Chicago and upon the fact that a car under standard refrigeration will carry about 27,200 pounds of revenue-paying load, while a car of precooled and preiced fruit will load approximately 33,000 pounds. This difference is caused by the fact that where the fruit is precooled and preiced the boxes of fruit are placed close together in the car, whereas in shipments under standard refrigeration it is necessary that the boxes be not placed close together. In view of the foregoing,
1784 we do not think that the petitioners have any valid complaint to make of the charge of $7.50 per car established by the Commission.

The case is thus narrowed down to a single question, namely:

Have the shippers who desire to precool their own fruit, which it is conceded they have the right to do, the right to place ice in the bunkers of the car for the purpose of making their precooling effective and of preserving the fruit precooled until it reaches its destination; or, is the placing of the ice in the bunkers, where the fruit is precooled by the shipper, a transportation service which the carrier has the right to perform to the exclusion of the shipper?

The claim of petitioners that the placing of ice in the cars by shippers of precooled fruit is a transportation service is based upon the language of section 1 of the act to regulate commerce, which reads as follows:

"'Transportation' shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported."

It must be observed that the language used with reference to icing is, "icing * * * of property transported." It is important, therefore, that we consider the findings of the Commission with reference to the precooling of fruit as practiced by the shipper and the exact conclusions reached by it as a result of such findings. In the report made in connection with the order of January 14, 1911, the Commission found as follows:

1785

"It was suggested upon the argument that inasmuch as these bunkers were filled with ice in case of precooled shipments as well as in standard refrigeration, the carrier had the right to insist upon furnishing the ice even though the grower might precool his fruit. A moment's consideration will show that this contention is without merit, and would if sustained be without benefit to the carrier. The ice with which these bunkers are filled is not manufactured by the railroad at the point where it is used. It would be necessary to fill the bunkers with ice at San Bernardino or Colton and move the car when iced to the packing house. By the time it reached there the ice would have been partially exhausted, and this would render it necessary to open and refill the bunkers.

"This service should be performed in the most economical manner, and it is evident that the ice can be best supplied by the same parties who load the car and prepare it for shipment. The filling of the bunkers with ice is a part of the preparation of the car for shipment and is not a part of the transportation service which is rendered by the railroads. It should also be noted that great importance is attached to the filling of the bunkers completely and with large cakes of ice which will melt slowly.

"To allow the carrier to fill these bunkers would be a source of no profit to it and would introduce an element of discord into the transaction. If the car arrived in bad condition, the shipper would be apt to say that the bunkers had not been properly reiced or that the car had not been properly sealed. That uncertainty is removed where the shipper makes the car ready for transportation and the service rendered by the carrier is purely one of

1786

transportation. It seems clear that the carrier itself would prefer that this icing should be done by the shipper rather than attempt to do it at anything like what would be the actual cost to the shipper plus a reasonable profit to the carrier. * * *

"The matter, therefore, stands like this: The United States Government has suggested, and these shippers, acting upon the suggestion, have perfected a system of handling these oranges by which they can be carried during all heated months to destination at an expense of $32.50 per car, approximately. The carriers offer an alternative system at a charge of $62.50, or probably slightly more on the average, and this charge for that service has been found to be reasonable. May the carrier insist that the shipper shall pay this higher charge, or has the shipper the right to avail himself of the modern method?" (20 I. C. C. Rep., 106.)

In the report made in connection with the order of April 8, 1912, the Commission found as follows:

"But, while in our opinion the process of precooling as above defined is not a transportation service, since it is performed by the shipper and can not be performed by the carrier, it does nevertheless take the place of refrigeration, and if these defendants had provided and were prepared to furnish refrigeration which would answer the same purpose as precooling at substantially the same price, then it might perhaps be held that the shipper should avail himself of the refrigeration which the carrier was prepared to
1787 furnish; but that situation is not here presented. This record shows that the cost to the shipper of refrigeration when furnished by the railroad in any one of the several forms offered is upon the average from $30 to $35 a car greater than the cost of precooling. The complainants urge that they have the legal right to precool and that this right can not be denied them by this Commission. Without expressing any opinion upon that proposition, we are clear that until the carriers offer a substitute for precooling which is fairly its equivalent in cost and in efficiency, it is the right of the shipper to avail himself of this privilege. As stated in our former opinion, the difference in expense applied to all the carloads of citrus fruits which are now refrigerated in transit would equal $600,000 per year." (23 I. C. C. Rep., 267.)

The result of the whole matter is that the Commission found that the precooling service performed by the shipper could not be performed by the petitioners for the reasons stated in the report, and that petitioners offer no substitute for such precooling which is fairly equivalent in cost and in efficiency. The Commission expressed no opinion upon the absolute legal right of the shipper to precool (including icing) his fruit, but decided only that until petitioners offer a substitute for precooling as practiced by the shipper which is fairly its equivalent in cost and in efficiency, it was the right of the shipper to avail himself of this privilege. We think this was an administrative ruling clearly within the power and jurisdiction of the Commission and with which this court may not interfere.

1788 As it is conceded by counsel for the petitioners that the shippers have the right to precool their fruit, with the exception of placing ice in the bunkers of the car in connection with such precooling, and that it is not necessary to furnish any different car than the one provided for standard refrigeration or precooling by the carrier, and that the ice placed in the car is furnished by the shipper prior to the time at which the car is delivered to the carrier for transportation, the matter of precooling by the shippers becomes a practice which the Commission could condemn or indorse without interference by the courts.

The petition, therefore, will be dismissed, and it is so ordered.

1789 In the United States Commerce Court, February Session, 1913.

No. 41.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, Southern Pacific Company, and San Pedro, Los Angeles & Salt Lake Railroad Company, Petitioners,

v.

THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission, Arlington Heights Fruit Company et al., Interveners.

Final Decree.

Entered April 1, 1913.

This cause came on for final hearing at this session and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed that the petition, the supplemental petition, and the amended and supplemental petition, and each of them, of the petitioners, be and the same are hereby dismissed at their costs.

By the court:

MARTIN A. KNAPP,
Presiding Judge.

1790 In the United States Commerce Court.

No. 41.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Southern Pacific Company, and San Pedro, Los Angeles and Salt Lake Railroad Company, Petitioners,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission and Arlington Heights Fruit Exchange et al., Intervening Respondents.

Petition for Allowance of Appeal.

Filed May 5, 1913.

Come now the petitioners in the above entitled cause and, feeling aggrieved by the final order or decree of the Court entered herein on the first day of April, 1913, pray for an order allowing an appeal from the said final order or decree to the Supreme Court of the United States, and for an order fixing the amount of security which complainants shall be required to furnish as a cost bond upon the said appeal.

ROBERT DUNLAP.
T. J. NORTON.
J. G. WILSON.
A. S. HALSTED.

Chicago, April 25, 1913.

1791 In the United States Commerce Court.

No. 41.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Southern Pacific Company, San Pedro, Los Angeles and Salt Lake Railroad Company, Petitoners,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission and Arlington Heights Fruit Exchange et al., Intervening Respondents.

Assignment of Errors.

Filed May 5, 1913.

Come now the petitioners in the above entitled cause and make the following assignment of errors to the order and decree of the Court in the above entitled cause:

I.

The Court erred in holding that shippers of citrus fruits had a right to put ice in the bunkers of the cars of the petitioners "until

petitioners offer a substitute for precooling as practiced by the shipper which is fairly its equivalent thereto in cost and in efficiency," and that the ruling of the Interstate Commerce Commission to that effect was an administrative ruling with which the Courts could not interfere; whereas under Section 1 of the Act to Regulate Commerce "refrigeration or icing" is "transportation" which it is the legal duty of the carriers to furnish and which they may insist upon providing.

II.

The Court erred in sustaining the holding of the Inter-
1792 state Commerce Commission that the withdrawal by the carriers from their tariffs of the privilege which the carriers had accorded to shippers of pre-icing cars was unlawful and that the Commission had authority to suspend and finally annul the supplements to the tariffs withdrawing such privilege.

III.

The Court erred in sustaining the order of the Commission of January 14, 1911, requiring the carriers to abstain for a period of not less than two years from exacting their charge of $30 per car upon oranges pre-cooled and pre-iced by the shipper when transported in carloads, and to establish and maintain in force for a period of not less than two years a charge upon oranges pre-cooled and pre-iced by the shipper of not to exceed $7.50 per car.

IV.

The Court erred in sustaining the order of the Commission of April 8, 1912, requiring the carriers to cancel their tariffs and supplements withdrawing from shippers the privilege of pre-icing the cars and directing that they continue in effect and maintain in force for a period of two years a charge of not to exceed $7.50 per car for pre-cooling oranges transported in carloads from shipping and producing points in southern California to points in other states designated in said tariffs.

V.

The Court erred in holding that the charge of $7.50 prescribed by the Commission as compensation for the carriers by the decision
and order of the Commission was compensatory, because it
1793 appears on the face of the decision of the Commission that said allowance was not sufficient to cover the costs of the carriers.

VI.

The Court erred in entering an order dismissing the petition, the supplemental petition, and the amended and supplemental petition.

ROBERT DUNLAP
T. J. NORTON,
J. G. WILSON,
A. S. HALSTED,
Solicitors for Petitioners.

Chicago, May 2, 1913.

1794 In the United States Commerce Court.

No. 41.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Southern Pacific Company, and San Pedro, Los Angeles and Salt Lake Railroad Company, Petitioners,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission and Arlington Heights Fruit Exchange et al., Intervening Respondents.

Order Allowing Appeal.

Entered May 5, 1913.

The prayer of the petitioners for an allowance of appeal in the above entitled cause coming on to be heard, an appeal is hereby allowed to the Supreme Court of the United States to review the final order and decree hereinbefore entered in this cause dismissing the petition, the supplemental petition, and the amended and supplemental petition; and the cost bond is hereby fixed at $250.

Dated this fifth day of May 1913, A. D.

MARTIN A. KNAPP.

1795 In the United States Commerce Court.

No. 41.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Southern Pacific Company, and San Pedro, Los Angeles and Salt Lake Railroad Company, Petitioners,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission and Arlington Heights Fruit Exchange et al., Intervening Respondents.

Cost Bond on Appeal.

Filed May 8, 1913.

Know all men by these presents that American Surety Company of New York is held and firmly bound unto the United States of America, the Interstate Commerce Commission, the Arlington Heights Fruit Exchange and all others concerned in the above entitled cause in the sum of $250, to be paid by the petitioners subject to the following conditions:

Whereas, the petitioners in the above entitled cause have sued out an appeal to the Supreme Court of the United States to reverse the order and final decree entered in the United States Commerce

Court in said cause on the first day of April, in the year of our Lord nineteen hundred thirteen,

Now, therefore, the condition of this obligation is such that if the said petitioners shall prosecute such petition to effect and answer all costs if they fail to make the said appeal good, then this ob-
1796 ligation to be void, but otherwise to remain in full force and effect.

Dated this 7th day of May 1913, A. D.

AMERICAN SURETY COMPANY OF NEW YORK,
By L. BERT NYE,
Its Resident Vice-President.

[Seal of the American Surety Company of New York.]

Attest.
PAUL N. CHERRY,
Resident Assistant Secretary.

The foregoing bond approved this 8th day of May, 1913, A. D.

MARTIN A. KNAPP,
Presiding Judge.

1797 STATE OF NEW YORK,
County of New York, ss:

A. L. Adams, being duly sworn, says: That he is an Assistant Secretary of the American Surety Company of New York; that said Company is a corporation duly created, existing and engaged in business as a surety company under and by virtue of the laws of the state of New York, and has duly complied with all the requirements of the laws of said state applicable to said Company, and is duly qualified to act as surety under such laws. That said company has also duly complied with and is duly qualified to act as surety under the Act of Congress of August 13, 1894, entitled "An Act relative to recognizances, stipulations, bonds and undertakings and to allow certain corporations to be accepted as surety thereon;" that the within is a true copy of the last statement of the assets and liabilities of said Company as rendered pursuant to section 4 of said Act of Congress; that said statement is true and that said American Surety Company of New York is worth more than $6,000,000 over and above all its debts and liabilities and such exemptions as may be allowed by law.

A. L. ADAMS.

Subscribed and sworn before me this 8th day of April, 1913.
[NOTARIAL SEAL.] E. A. FARRELL,
Notary Public, New York County, No. 1058.

Register's office, New York County, No. 5015. Certificate filed in all counties.

1798 In the United States Commerce Court.

No. 41.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Southern Pacific Company, and San Pedro, Los Angeles and Salt Lake Railroad Company, Petitioners,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission and Arlington Heights Fruit Exchange et al., Intervening Respondents.

Præcipe for Transcript.

Filed May 5, 1913.

To the Clerk of the United States Commerce Court:

You will please prepare a transcript of the record in the above entitled cause to be filed in the office of the Clerk of the Supreme Court of the United States under the appeal heretofore perfected to said Court, and include in said transcript the following pleadings, orders, testimony, exhibits and papers:

1. Amended and supplemental petition.
2. Motion for leave to file amended and supplemental petition and order granting the same.
3. Petition of intervention of Arlington Heights Fruit Company et al. and order allowing the same.
4. Answer of the Interstate Commerce Commission.
5. Answer of the Arlington Heights Fruit Company et al.
6. Per curiam opinion and order denying motion of petitioners for temporary injunction.
7. Answer of the United States.
8. Order denying motion for temporary restraining order.

1799 9. Answer of the United States to supplemental petition.

10. Order that the answer of the United States and the answer of the Interstate Commerce Commission to the petition and to the supplemental petition may stand as answers to the amended and supplemental petition.

11. Order allowing record in cause No. 61 in the United States Commerce Court to be filed in this cause and to be used as the record herein.

12. Testimony taken by the Interstate Commerce Commission and exhibits received by it on the trial of the cause; also copy of exhibits omitted from printed record in Commerce Court by stipulation of parties.

13. Opinion of Court dismissing the petitions.

14. Final order dismissing the petition, the supplemental petition and the amended and supplemental petition.

15. All appeal papers.

Said transcript of the record to be prepared as required by law and the rules of this Court and the rules of the Supreme Court of

the United States, and to be filed in the office of the Clerk of the Supreme Court of the United States before May 29, 1913.

(Signed) ROBERT DUNLAP.
T. J. NORTON.
J. G. WILSON.
A. S. HALSTED.

Chicago, April 25, 1913.

1800 STATE OF ILLINOIS,
County of Cook, ss:

T. J. Norton, being duly sworn, deposes and says that he is one of counsel for the petitioners in the above entitled proceeding, and that on May 2, 1913, he served a copy of the within præcipe for transcript upon counsel of record for respondent and for intervening respondents by mailing to each of them, as follows:

To Mr. Blackburn Esterline, Department of Justice, Washington, D. C.

To Mr. P. J. Farrell, Solicitor for Interstate Commerce Commission, Washington, D. C.

To Mr. William E. Lamb, Solicitor for Arlington Heights Fruit Exchange et al., Monadnock Block, Chicago, Illinois.

T. J. NORTON.

Subscribed and sworn to before me this second day of May, 1913.

[NOTARIAL SEAL.] JOHN A. McDONALD,
Notary Public.

1801 United States Commerce Court.

No. 41.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, and SAN PEDRO, LOS ANGELES and SALT LAKE RAILROAD COMPANY, Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION and ARLINGTON HEIGHTS FRUIT EXCHANGE et al., Interveners.

UNITED STATES OF AMERICA, *ss:*

I, G. F. Snyder, Clerk of the United States Commerce Court, do hereby certify the above and foregoing (on pages numbered 1 to 1800 inclusive) to be a true and complete transcript of the proceedings had and papers filed in the above entitled cause, made in accordance with the præcipe filed in the office of the Clerk of said Court on the 5th day of May, 1913, as the same appear from the original record in the Clerk's Office of said Court.

In testimony whereof I have hereunto set my hand and affixed the seal of the United States Commerce Court this 27th day of May, A. D. 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

1802 In the United States Commerce Court.

No. 41.

[Stamp across face of copy illegible.]

United States Commerce Court. Filed May 15, 1913. G. F. Snyder, Clerk.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Southern Pacific Company, and San Pedro, Los Angeles and Salt Lake Railroad Company, Petitioners,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission and Arlington Heights Fruit Exchange et al., Intervening Respondents.

Citation.

The United States of America to the United States, to the Interstate Commerce Commission, and to Arlington Heights Fruit Exchange, intervenors, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to an appeal filed in the Clerk's Office of the United States Commerce Court in the above entitled suit, to show cause, if any there be, why the order and decree rendered against the said appellants, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this fifth day of May in the year of our Lord 1913.

MARTIN A. KNAPP,
Presiding Judge.

1803 Service of the foregoing citation is hereby waived.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General, for the United States.

P. J. FARRELL,
For the Interstate Commerce Commission

WILLIAM E. LAMB,
For Arlington Heights Fruit Exchange et al.

Endorsed on cover: File No. 23,739. U. S. Commerce Court. Term No. 590. The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, and San Pedro, Los Angeles & Salt Lake Railroad Company, appellants, vs. The United States, The Interstate Commerce Commission, and Arlington Heights Fruit Exchange. Filed June 9th, 1913. File No. 23,739.

IN THE

United States Commerce Court.

No. 61.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA, RESPONDENTS, INTERSTATE COMMERCE COMMISSION ET AL., INTERVENERS.

FILED MAY 15, 1912.

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IN THE

United States Commerce Court.

No. 61.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al.
vs.
THE UNITED STATES.

a Filed United States Commerce Court, Apr. 15, 1912. G. F. Snyder, Clerk.

Interstate Commerce Commission, Washington.

I, John H. Marble, Secretary of the Interstate Commerce Commission, do hereby certify that the papers hereto attached are true copies of the petition filed with the Interstate Commerce Commission on November 27, 1909, in the case of Arlington Heights Fruit Exchange and others against Southern Pacific Company and others, docket No. 3000, joint answer of The Atchison, Topeka & Santa Fe Railway Company, The Eastern Railway Company of New Mexico, The Gulf, Colorado & Santa Fe Railway Company, Northwestern Pacific Railroad Company, The Pecos & Northern Texas Railway Company, The Pecos River Railroad Company, Santa Fe Refrigerator Despatch Company, The Southern Kansas Railway Company of Texas and The Texas & Gulf Railway Company, forming the Santa Fe System, and San Diego, Cuyamaca & Eastern Railway Company and San Diego Southern Railway Company, joint answer of Southern Pacific Company, Oregon Railroad & Navigation Company, Northwestern Pacific Railroad Company, Galveston, Harrisburg & San Antonio Railway Company, Houston & Texas Central Railroad Company, Texas & New Orleans Railroad Company and Morgan's Louisiana & Texas Railroad & Steamship Company, and separate answer of San Pedro, Los Angeles & Salt Lake Railroad Company thereto, the originals of which are now on file and of record in the office of this Commission.

b In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this 15th day of April, 1912.

[Seal Interstate Commerce Commission, 1887.]

JOHN H. MARBLE, *Secretary.*

c Before the Interstate Commerce Commission.

No. 3000.

ARLINGTON HEIGHTS FRUIT EXCHANGE et al.
vs.
SOUTHERN PACIFIC COMPANY et al.

Separate Answer of Santa Fe System Companies: The Atchison, Topeka and Santa Fe Railway Company, The Eastern Railway Company of New Mexico, The Gulf, Colorado and Santa Fe Railway Company, Northwestern Pacific Railroad Company, The Pecos and Northern Texas Railway Company, The Pecos River Railroad Company, Santa Fe Refrigerator Despatch Company, The Southern Kansas Railway Company of Texas and The Texas and Gulf Railway Company; and also of the San Diego, Cuyamaca and Eastern Railway Company, and San Diego Southern Railway Company.

Gardiner Lathrop, of Counsel.
Robert Dunlap, E. W. Camp, T. J. Norton, for Santa Fe System Companies.
Harry L. Titus, for San Diego, Cuyamaca and Eastern Ry. Co and San Diego Southern Railway Company.

Chicago, December 31, 1909.

1 Before the Interstate Commerce Commission.

No. 3000.

ARLINGTON HEIGHTS FRUIT EXCHANGE et al.
vs.
SOUTHERN PACIFIC COMPANY et al.

For answer to the complaint in the above entitled proceeding these defendants separately and severally say:

I and II.

They admit the averments of paragraphs 1 and 2 of the complaint.

III.

Answering paragraph 3, they admit that complainants have been engaged as stated and that the citrus fruits handled by complainants have been transported by defendants over their respective
2 lines of railway to various points throughout the United States and elsewhere.

They admit that complainants have been and are dependant upon the defendant transportation companies in the conduct of their busi-

ness, because the defendant companies constitute, as these defendants believe, practically all of the rail and water carriers operating in the United States and Canada, except a few rail carriers in what is known as Southeastern territory, and a few Canadian lines.

But these defendants deny that the defendant companies have an absolute monopoly of the business of transporting citrus fruits from California to market points. They say that the defendants are not exercising any right to haul citrus fruits out of California which may not be exercised by any other citizen who may desire and prepare to do so; and that the non-existence of any monopoly by any carrier or carriers of citrus fruit out of California, or any restraint of or control over the free and general movement of said fruit, is evidenced by the allegation of paragraph 3 that complainants have been marketing and are now marketing their citrus fruits "throughout the United States and elsewhere."

3

IV.

These defendants admit, as stated in paragraph 4 of the complaint, that they have for several years charged a rate of $1.15 a hundred on all citrus fruit, except lemons, out of California, Nevada, and Utah to points in the United States east of the Rocky Mountains designated in the tariffs and supplements mentioned and that said tariffs and supplements have been filed with the Interstate Commerce Commission and concurred in as stated.

They admit that, as averred, in certain parts of the United States local rates are added to said through blanket rate of $1.15, and they say that this is because the said rate of $1.15 is so low that some of the common carriers in what is known as Southeastern territory and in a few instances in Canada refuse to participate in said rate along with these and other defendants.

V.

Answering paragraph 5, these defendants admit that for a number of years they and other defendants have charged complainants a through blanket rate on lemons in carload lots of $1 per hundred from California, Nevada, and Utah to all points in the United

4 States east of the Rocky Mountains as designated in the tariffs and supplements mentioned, and that said tariffs and supplements have been filed with the Interstate Commerce Commission and concurred in as stated.

They admit also that in certain parts of the United States a local rate is added to said joint blanket rate of $1 on lemons, but they say say that in said parts of the United States the common carriers refuse to become parties to said joint tariffs of the defendants because they believe the said rate of $1 to be unremunerative.

VI, VII, and VIII.

Answering paragraphs 6, 7 and 8 of the complaint, these defendants say that they have for many years furnished refrigerator cars for the transportation of citrus fruits out of California and that they also provided refrigeration for such shipments and charged the shippers therefor.

IX.

Answering paragraph 9, these defendants deny that to avoid the excessive charges for refrigeration or icing exacted by the defendants a number of complainants have at large expense erected or
5 equipped refrigeration plants for the purpose of precooling and preicing shipments of citrus fruits.

They deny that prior to the issuance of the tariffs mentioned in said paragraph no charges were collected or provided for in any tariffs for the refrigeration or icing of citrus fruit where the cars had been preiced and precooled by the shipper with instructions not to reice in transit or otherwise; but they allege the facts to be that the only charges for refrigeration not collected by the defendants have been charges for which bills were rendered by the defendants but which complainants have so far arbitrarily refused to pay.

These defendants deny that the carriers do not perform refrigerating service where cars are preiced and precooled by the shipper, and they therefore deny that they should not collect charges for refrigerating service in such cases, and they deny that charges made for refrigerating service in such cases are illegal, null or void. They further deny that any refrigeration charges imposed and collected by defendants are excessive.

X.

Answering paragraph 10, these defendants admit that dur-
6 ing the month of October, 1909, they announced that on November 15, 1909, they would increase the carload rate on lemons from $1 per hundred to $1.15 from California, Nevada, and Utah to various points in Minnesota, North Dakota, South Dakota and Manitoba, as appears from Supplement No. 2 to Transcontinental Freight Bureau Eastbound Tariff No. 7-B (I. C. C. No. 894), and that to some other points mentioned in said supplement locals would be added to the through rate of $1.15.

These defendants deny that there was any "concert of action" by the defendants beyond that concert required by law, that concert of action which hitherto reduced, at the solicitation of complainants, the rate on lemons from $1.25 a hundred to $1 as an emergency relief rate and subsequently reduced the rate on oranges from $1.25 to $1.15, and that concert of action which has given to the complainants the cheapest and most far-reaching system of postage stamp rates, with diversions and other special service, prevailing anywhere in the United States. They say that the said rate of $1.15 was published and promulgated in strict accordance with paragraph 4 of section 6 of the Act to Regulate Commerce, as amended.

7 XI.

Answering paragraph 11 these defendants admit that they announced during the month of October, 1909, that on December 6 they would increase the rate on lemons in straight carloads from $1 to $1.15 from points in California, Nevada, and Utah to substantially all points in the United States other than those mentioned in paragraph 10 of the complaint, as appears from Transcontinental Freight

Bureau Eastbound Tariff 3-H (I. C. C. No. 906), effective December 6, 1909.

Further answering, these defendants say that the "concert of action" in the publication of this tariff was that contemplated and required by law.

XII.

Answering paragraph 12, these defendants are without information adequate to enable them to answer the allegation that the said increase of the rate on lemons from $1 a hundred to $1.15 would cost the complainants at least $200,000 a year; and, basing their denial upon that ground, they deny said allegation.

These defendants deny that the existing tariffs or rates
8 covering the transportation of lemons in carloads from points in California, Nevada, and Utah to said other points always have been or still are more than fair, just, reasonable or remunerative to the defendants, or that the defendants have from time to time materially or substantially increased their net revenues or profits or their net surplus under said existing tariffs, or that they have been or still are earning large profits under said tariffs.

Answering the second division of paragraph 12, these defendants deny that the lemon growers of California had for a number of years previous to August 5, 1909, been unable successfully to compete with Italian and Sicilian growers of lemons in the markets of this country, or that in consequence thereof they have been unable to dispose of their entire crop, or that they have suffered heavy losses in their business.

They admit that the lemon growers of California agitated for the imposition of a higher protective tariff duty on foreign lemons, but they deny that that duty was necessary for the lemon industry of California to continue to exist. They admit that the Congress of the United States imposed a duty of ½c a pound upon imported lemons. They deny that there is or has been no new con-
9 dition which justifies said advance of the rate on lemons from $1 a hundred to $1.15, and they deny that said advance is an attempt on the part of the defendants to appropriate to themselves a large part of such increased tariff on foreign lemons.

XIII.

Answering paragraph 13, these defendants say that said rates and said increased rates have been put into effect and all said other rates and charges have been and are now maintained by that "concert of action among all of said defendants" only which is required by law. They deny that the defendants have conspired to destroy and terminate all competition, and they move that the averments of the complaint in this respect be stricken out as impertinence for the reason that complainants know that even if they were true the Interstate Commerce Commission would be without jurisdiction of the matter.

10 XIV.

Answering paragraph 14, they deny that the said rates for the transportation of citrus fruit in straight or mixed carloads or that

the charges for refrigeration or icing citrus fruit are unreasonable, unjust, vexatious, excessive, extortionate, or discriminatory, or that they are in violation of law.

XV.

Answering paragraph 15, these defendants say that the averments of conspiracy, combination, confederacy and agreement to suppress competition are impertinent under the rulings of the courts and the Commission and should therefore be stricken out as an attempt to influence the Commission by bombast.

XVI.

Answering paragraph 16, these defendants deny that any of their acts or conduct have been or are in violation of any law; and they deny that the rates complained of are excessive or that if they are permitted to be or remain in effect they will prevent or end all competition between defendants for the transportation of citrus fruit.

Wherefore, these defendants ask that the complaint be
11 dismissed.

ROBERT DUNLAP,
E. W. CAMP,
T. J. NORTON,
For Santa Fe System Companies.
HARRY L. TITUS,
For San Diego, Cuyamaca and Eastern Ry. Co. and San Diego Southern Ry. Co.

GARDINER LATHROP,
Of Counsel.

CHICAGO, *December* 31, 1909.

Docketed 1/18/1910.

a Before the Interstate Commerce Commission.

No. 3000.

ARLINGTON HEIGHTS FRUIT EXCHANGE et al., Complainants,
vs.
SOUTHERN PACIFIC COMPANY et al., Defendants.

Answer of Defendants, Southern Pacific Company, Oregon Railroad & Navigation Company, Northwestern Pacific Railroad Company, Galveston, Harrisburg & San Antonio Railway Company, Houston & Texas Central Railroad Company, Texas & New Orleans Railroad Company, Morgan's Louisiana & Texas Railroad & Steamship Company.

F. C. Dillard, P. F. Dunne, C. W. Durbrow, Attorneys for Defendants above-named.
Wm. F. Herrin, of Counsel.

[Stamped:] The A., T. & S. F. Ry Co., Law Department, Jan. 18, 1910. No. —.

1 Before the Interstate Commerce Commission.

No. 3000.

ARLINGTON HEIGHTS FRUIT EXCHANGE et al., Complainants,
vs.
SOUTHERN PACIFIC COMPANY et al., Defendants.

Answer of Defendants, Southern Pacific Company, Oregon Railroad & Navigation Company, Northwestern Pacific Railroad Company, Galveston, Harrisburg & San Antonio Railway Company, Houston & Texas Central Railroad Company, Texas & New Orleans Railroad Company, and Morgan's Louisiana & Texas Railroad & Steamship Company.

The defendants above-named, for answer herein:

Upon the ground that they have not sufficient knowledge, information or belief upon the subject to enable them to answer, defendants deny the allegations contained in paragraph 1 of
2 complainants' petition, and pray that complainants may be put to their proof thereof.

With reference to the allegations contained in paragraph 3 of complainants' petition, defendants allege that they are common carriers engaged in the transportation of passengers and property by railroad, operating between the termini of their respective roads, and as such common carriers are subject to the provisions of the Act to Regulate Commerce, as amended and supplemented.

With reference to the allegations contained in paragraph 3 of

complainants' petition, defendants deny that complainants, or any or either of them, have for any time or at all been, or still are, wholly dependent upon defendants for the transportation of their fruits to various or any points throughout the United States, and deny that defendants have an absolute or any monopoly of the business of transporting citrus fruits from all or any points in California, or that there are no other available means of transportation for such citrus fruits from California points to the markets where said fruits are shipped or sold.

Defendants admit the allegations contained in paragraphs 4, 5, 6, 7 and 8 of complainants' petition.

Defendants deny that any of the charges for refrigeration or icing exacted by defendants or any or either of them are at all excessive; and upon the ground that they have not sufficient knowledge, information or belief upon the subject to enable them to answer, deny that complainants, or any or either of them, in
3 order to avoid paying charges for refrigeration or icing, have at a large or any expense erected or equipped refrigeration plants for the purpose of pre-cooling or pre-icing shipments of citrus fruits. Deny that prior to the issuance of the tariffs referred to in paragraph 9 of complainants' petition no charges were collected or provided for in any tariffs issued by any of said defendants, for the refrigeration and icing of shipments of citrus fruits, where the cars were pre-iced, or pre-cooled and pre-iced, by the shipper with instructions not to re-ice the same in transit or otherwise; and in this connection defendants allege that refrigeration charges were assessed in accordance with the provisions of the tariffs which were superseded by said tariffs referred to. Deny that by concert of action these defendants, or any or either of them, at all gave out or announced that they would assess any of the charges referred to in paragraph 9 of complainants' petition; defendants admit that, as alleged by complainants, the uniform refrigeration charges are applied on all shipments; but deny that, in any of the cases mentioned by complainants, defendants do not perform refrigeration or icing service where cars are pre-iced, or pre-cooled and pre-iced, by shipper, or that any charge for such service is at all illegal, null or void.

Defendants deny that by concert of action they at all give out or announced, at any time or at all, that their rates or charges for transporting shipments in any manner would be at all increased, except that during the time specified by complainants in
4 paragraph 10 of their petition it was announced by defendants, by means of the tariff referred to in said paragraph, that the rates specified in said paragraph would be made effective upon the dates specified; and defendants allege that said rates were duly and regularly published by said tariff, as required by law.

Defendants deny that by concert of action they at any time or at all gave out or announced that they would increase their rates or charges for transporting lemons between the points or in the manner alleged in paragraph 11 of complainants' petition; but admit that at the time specified by complainants in said paragraph defendants, by filing and publishing the tariff therein referred to, an-

nounced that said rates would be increased to the amount specified in said tariff.

Upon the ground that they have not sufficient knowledge, information or belief upon the subject to enable them to answer, defendants deny that the increases in the tariff rates for the transportation of lemons will result in an increased cost to complainants of at least $200,000 per year; and deny that the existing tariffs covering the transportation of lemons in the manner and between the points specified in paragraph 12 of complainants' petition are, or for any time or at all have been, at all more than fair, just, reasonable or remunerative to defendants; or that defendants have from time to time materially or substantially or at all increased their net revenues or profits or their net surplus under said existing tariffs, or have been or still are at all earning large profits thereunder.

Upon the ground that they have not sufficient knowledge,
5 information or belief upon the subject to enable them to answer, defendants deny the allegations contained in paragraph 12 of complainants' petition, with reference to the lemon industry of Sicily and Southern Italy, and as to the amount of such commodity produced in said countries, and as to the quantity of lemons furnished by the growers of California, and that the crops of the California growers are sufficient to supply the larger part of the lemons consumed in the United States; and deny that by reason of the lower cost of labor in Italy or Sicily, or the low rates from said countries to the United States, the lemon growers of California have for any time or at all been unable to successfully compete with Italian or Sicilian growers in the lemon markets of the United States, or that in consequence thereof the California growers have been at all unable to dispose of their entire crop, or have suffered heavy or any losses in their business. Admit that the lemon growers of California have agitated in favor of the imposition of a higher tariff duty on foreign lemons, but upon the ground that they have not sufficient knowledge, information or belief upon the subject to enable them to answer, defendants deny that Congress at all responded to such agitation, and admit that it is a fact that upon the date specified by complainants the tariff rate on foreign lemons was increased in the amount specified. Deny that defendants, upon the passage of said tariff law, by any concert
of action increased said lemon rate, and in this connection
6 allege that said lemon rate was increased in the amount specified by complainants, but that at the time the emergency rate on lemons was made effective at the instance and request of complainants, defendants advised complainants that the rate upon lemons would be increased at about the time said increased rate was actually made effective, and defendants deny that there has been no new condition which justifies said advance, or that said advance is at all an attempt on the part of defendants to appropriate to themselves a large or any part of said increased tariff on foreign lemons; and in this connection defendants allege that said increased rate was made effective in order that carriers might receive fair

remuneration for transporting shipments of lemons, the cost of transportation of which is greater than the cost of transportation of freight which does not require special equipment and expedited service.

Deny that all or any of said rates specified by complainant- have been at all put into effect, or that all or any of said rates or charges have been at all maintained by concert of action among defendants or any or either of them. Defendants deny that they have at all conspired to at all destroy or terminate any competition among them respecting the transportation of lemons, oranges, grape-fruit, limes, mandarines, tangerines or citrons, or of any other commodity or at all whether in straight or mixed carloads, or respecting charges for refrigeration or icing of such citrus fruits, or to at all restrain trade or commerce between any States, or at all monopolize
7 any interstate commerce, or to increase the tariff rates for transporting lemons to such an extent, or to maintain the existing charges for the transportation of other fruits, or the charges for refrigerating or icing the same, or to at all discriminate against complainants or any or either of them, or the business conducted by them or any or either of them, so as to make it at all unprofitable for complainants or any or either of them to further continue in said business. Deny that defendants or any or either of them caused a meeting of their Traffic Managers or any other officials to be held for the purpose of having defendants come to a common understanding or agreement to terminate all competition between them, so as to increase the tariff on lemons, or to exact refrigeration or icing charges on citrus fruits when the same were pre-iced, or pre-cooled and pre-iced, by shipper, or otherwise or at all; and deny that defendants, or any or either of them, at all agreed, at any time or at all, to cease all or any competition between them, on or after any date or time, pertaining to the transportation of lemons, or for the purpose of uniformly adopting or putting in force, from or after any time or at all, excessive or any rates for the transportation of lemons in any manner referred to or complained of by complainants in their petition, or otherwise or at all; and in this connection, defendants allege that the Interstate Commerce Commission has no jurisdiction to determine the issues sought to be raised by complainants in paragraph 13 of said petition, and move
8 to strike said paragraph from said petition.

Defendants deny that the rates complained of for the transportation of oranges, grape-fruit, lemons, mandarines, tangerines and citrons, whether in straight or mixed carloads, or the refrigeration or icing charges maintained by defendants, are at all unreasonable, unjust, vexatious, excessive, extortionate or discriminatory in any respect whatsoever, or that any of said rates are at all in violation of the Act to Regulate Commerce as amended or supplemented.

With reference to the allegations contained in paragraph 15 of complainants' petition, defendants allege that they are separate, distinct, and competing lines of road, but deny that they are parallel lines; and deny that any conspiracy, combination, confederation

or agreement, or any suppression of competition, as alleged by complainants in their petition or otherwise or at all, with respect to the rates or charges for the transportation of the commodities specified in paragraph 15 of complainants' petition, were at all carried on through the meeting of the Transcontinental Freight Bureau, or otherwise or at all. Admit that through the instrumentality of the Transcontinental Freight Bureau, acting as agent for defendants, the tariffs referred to were published and filed with the Interstate Commerce Commission; and in this connection defendants allege that the Interstate Commerce Commission has no jurisdiction to determine the issues sought to be raised by
9 complainants in said paragraph, and move to strike said paragraph from said petition.

Deny that any of the acts or conduct of defendants complained of in complainants' petition, or otherwise or at all, are at all in violation of the Act to Regulate Commerce as amended or supplemented, or at all in violation of the Act of Congress known as "An Act to protect trade and commerce against unlawful restraints and monopolies," approved January 2, 1890, and known as "The Sherman Act;" deny that any of the rates referred to in complainants' petition are at all excessive, and deny that if any of said rates complained of are permitted to be or remain in effect the same will thereby or at all prevent or end all or any competition between defendants in the transportation or refrigeration of citrus fruits within any part of the United States, or otherwise or at all; and in this connection defendants allege that the Interstate Commerce Commission has no jurisdiction to determine the issues sought to be raised by complainants in paragraph 16 of their said petition, and move to strike said paragraph from said petition.

F. C. DILLARD,
P. F. DUNNE,
C. W. DURBROW,
Attorneys for Defendants Above-Named.

WM. F. HERRIN,
Of Counsel.

a Before the Interstate Commerce Commission.

ARLINGTON HEIGHTS FRUIT EXCHANGE et al., Complainants,
vs.
SOUTHERN PACIFIC COMPANY et al., Defendants.

Petition.

Mayer, Meyer, Austrian & Platt, American Trust Bldg., Chicago, Ills.; Joseph H. Call, Asa F. Call, Los Angeles, California, Attorneys for the above-named Complainants.

1 Before the Interstate Commerce Commission.

ARLINGTON HEIGHTS FRUIT EXCHANGE OF RIVERSIDE, CALIFORNIA; California Fruit Growers Exchange; Victoria Avenue Citrus Association of Riverside, California; C. E. Rumsey of Riverside, California; Arlington Heights Fruit Company of Riverside, California; Azusa Citrus Association of Azusa, California; Irwindale Citrus Association of Irwindale, California; Azusa Foot Hill Citrus Association of Azusa, California; Glendora Citrus Association of Glendora, California; Charter Oak Citrus Association of Charter Oak, California; A. P. Griffith Association of Azusa, California; Associated Fruit Exchange of Highgrove, California; Bloomington Fruit Association of Bloomington, California; Hemet Orange Growers Association of Hemet, California; Covina Fruit Exchange of Covina, California; Covina Orange Growers Association of Covina, California; Covina Citrus Association of Covina, California; Durate-Monrovia Fruit Exchange of Durate, California; Ontario Cucamonga Fruit Exchange of Upland, California; Upland Citrus Association of Upland, California; Citrus Fruit Association of Ontario, California; Lemon Growers Exchange of Upland, California; West Ontario Citrus Association of Upland, California; Cucamonga Citrus Fruit Growers Association of Cucamonga, California; Stewart Citrus Association of Upland, California; Mount View Orange and Lemon Growers Association of Upland, California; Etiwanda Citrus Fruit Association of Etiwanda, California; Cucamonga Lemon Association of Cucamonga, California; Queen Colony Fruit Exchange, of Corona, California; Corona Citrus Association of Corona, California; Corona Lemon Company of Corona, California; W. H. Jameson Association of Corona, California; Call Fruit Company of Corona, California; Redlands-Highlands Fruit Exchange of Redlands, California; Gold Buckle Association of East Highlands, California; Redlands Fruit Association of Redlands, California; Denman Fruit Packing Company of Bryn Mawr, California; Riverside Fruit Exchange of Riverside, California; Riverside Heights Orange Growers Association of Riverside, California; La Mesa Packing Company of Riverside, California; Pachappa Orange Growers Association of Riverside, California; Riverside

Navel Orange Company of Riverside, California; Co-Operative Fruit Growers Association of Riverside, California; Sugar Loaf Orange Growers Association of Highgrove, California; San Antonio Fruit Exchange of Pomona, California; Pomona Fruit Growers Exchange of Pomona, California; Indian Hill Citrus Association of North Pomona, California; Claremont Citrus Association of Claremont, California; San Dimas Lemon Association of San Dimas, California; Walnut Fruit Growers Association of Walnut, California; La Verne Orange Growers Association of Lordsburg, California; College Heights Orange Association of Claremont, California; San Bernardino County Fruit Exchange of San Bernardino, California; Colton Fruit Exchange of Colton, California; Rialto Orange and Lemon Association of Rialto, California; Highland Orange Growers Association of Highland, California; Highland Exchange Association of Highland, California; Semi Tropic Fruit Exchange of Los Angeles, California; Whittier Citrus Association of Whittier, California; Alhambra Orange Growers Association of Alhambra, California; C. W. Leffingwell, Junior, of Whittier, California; Placentia Orange Growers Association of Fullerton, California; Pasadena Orange Growers Association of Pasadena, California; Johnson Fruit Company of Santa Barbara, California; Cahuenga Valley Lemon Association of Colegrove, California; Fernando Fruit Growers Association of Fernando, California; Rivera Fruit Association of Rivera, California; A. Duffill Association of Los Angeles, California; Sydmer Ross Association of Fullerton, California; Jesse Knight & Sons of La Canade, California; Ojai Orange Association of Nordhoff, California; Anaheim Fruit Association of Anaheim, California; Sunset Fruit Exchange of Orange, California; David Hewes of El Modena, California; Santiago Orange Growers Association of Orange, California; Tulare County Citrus Fruit Exchange of Porterville, California; Porterville Citrus Association of Porterville, California; Zante Citrus Association of Porterville, California; Tule River Association of Success, California; Lemon Cove Association of Lemon Cove, California; Lindsay Fruit Association of Lindsay, California; Lindsay Packing House Company of Lindsay, California; Lindsay Orange Growers Association of Lindsay, California; Butte County Citrus Association of Oroville, California; P. C. Drescher of Oroville, California; Fairoaks Fruit Company of Fairoaks, California; Fillmore Citrus Fruit Association of Fillmore, California; Crocker Sperry Company of Santa Barbara, California; Santa Paula Fruit Association of Santa Paula, California; Escondido Fruit Growers Association of Escondido, California; Loveless Fruit Company of Escondido, California; Sweetwater Fruit Company of Bonita, California; Keen &
3 Company of San Diego, California; Lemon Grove Fruit Growers Association of Lemon Grove, California; Nathan W. Blanchard of Santa Paula, California; Bryn Mawr Fruit Growers Association of Redlands, California; A. B. Chapman of San Gabriel, California; Chula Vista Lemon

Growers Association of Chula Vista, California; Colton Orange Growers Association of Colton, California; Crafton Citrus Association of Craftonville, California; A. C. Denman & Sons of Redlands, California; East Highlands Citrus Association of East Highlands, California; Flagler Fruit & Packing Company of Corona, California; Henry Fuller & Sons of Redlands, California; W. P. Hammon of San Francisco, California; Hanson & Seares of Upland, California; Highgrove Orange Growers Association of Highgrove, California; Highland Fruit Growers Association of Highland, California; Limoneria Company of Santa Paula, California; C. F. Mohnike of Chula Vista, California; National Orange Company of Riverside, California; Ohio Lemon Company of Lemon Cove, California; Randolph Fruit Company of Los Angeles, California; Redlands Mutual Orange Distributors of Redlands, California; Redlands Orange Growers Association of Redlands, California; Rialto Orange Company of Rialto, California; San Diego Fruit Company of National City, California; San Marino Growers Packing Association of San Gabriel, California; West American Fruit Company of Redlands, California; W. E. Talbot of Globe, California; Burr Brothers of Burr Station, California; Boydston Brothers of Porterville, California; Pecomia Fruit Company of Pecomia, California; Highland Lemon Association of Highland, California; Rialto Lemon Association of Rialto, California; Tustin Lemon Association of Tustin, California; W. T. Henderson & Sons of Londsburg, California; California Produce Company of Pomona, California; Tustin Packing Company of Tustin, California; Orange Heights Fruit Association of Corona, California; Azusa-Covina-Glendora Fruit Exchange of Azusa, California, Complainants,

vs.

Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company, San Pedro, Los Angeles & Salt Lake R. R. Co., Abbotsford & Northeastern R. R. Co., Ahnapee & Western Railway Co., Alabama Great Southern R. R. Co., Alabama & Vicksburg Railway Co., Albia & Centerville Railway Co., Ann Arbor R. R. Co., Annapolis, Washington & Baltimore R. R. Co., Arcadia & Betsey River Railway Co., Arkansas Central R. R. Co., Arkansas & Louisiana Railway Co., Arkansas, Louisiana & Gulf Railway Co., Arkansas Midland R. R. Co., Arkansas Southwestern Railway Co., Ashland & Western Railway Co., Astoria & Columbia River R. R. Co., Atlanta & West Point R. R. Co., 5
4 Atlanta, Birmingham & Atlantic R. R. Co. and H. M. Atkinson & S. F. Parrott, Receivers Thereof; Atlantic R. R. Co., Atlantic Coast Line R. R. Co., Baltimore & Ohio R. R. Co., Baltimore & Ohio Southwestern R. R. Co., Baltimore & Sparrows Point R. R. Co., Baltimore, Chesapeake & Atlantic Railway Co., Baltimore Steam Packet Company, Bangor & Portland Railway Co., Bay of Quinte Railway Co., Bayonne & New Haven Transportation Company, Beaumont, Sour Lake & Western Railway Co., Belt Railway Company of Chicago; Berlin & New York Transportation Company, Bessemer & Lake Erie R. R. Co., Big

Level & Kinzua R. R. Co., Bloomsburg & Sullivan R. R. Co., Boston & Albany R. R. Co. (N. Y. C. & H. R. R. R., Lessee); Boston & Gloucester S. S. Company, Boston & Maine R. R., Boyne City, Gaylord & Alpena R. R. Co., Bradford & Western Pennsylvania R. R. Co., Brinkley, Helena & Indian Bay R. R. Co., Buffalo & Susquehanna Railway Co., Buffalo, Attica & Arcade R. R. Co., Buffalo, Rochester & Pittsburg Railroad Co., Bush Terminal R. R. Co., Calumet & Southeastern Ry. Co., Canadian Northern Quebec Railway Co., Canadian Pacific Railway Co., Catasaqua & Fogelsville R. R. Co., Catskill & New York Steamboat Company, Central Hudson Steamboat Company, Central Indiana Railway Co., Central New England Railway Co., Central of Georgia Railway Co., Central Ontario Railway Co., Central Railroad of New Jersey, Central Railroad of Pennsylvania, Central Vermont Railway Co., Charleston & Western Carolina Railway Co., The Chesapeake & Ohio Railway Co., Chesapeake Steamship Company, Chesapeake Western Railway, Chester Shipping Company, Chicago, Anamosa & Northern Railway Co., Chicago & Alton R. R. Co., Chicago & Eastern Illinois R. R. Co., Chicago & Erie R. R. Co., Chicago & Illinois Midland Railway Co., Chicago & Northwestern Railway Co., Chicago, Burlington & Quincy R. R. Co., The Chicago, Cincinnati & Louisville R. R. Co., James P. Goodrich, Receiver Thereof; Chicago Great Western Railroad Co., Chicago, Indianapolis & Louisville Railway Co., Chicago, Indiana & Southern R. R. Co., Chicago, Kalamazoo & Saginaw Railway Co., Chicago, Lake Shore & Eastern Railway Co., Chicago, Milwaukee & St. Paul Railway Co., Chicago, Peoria & St. Louis Railway Co. (of Illinois), John P. Ramsey & H. M. Merriam, Receivers Thereof; Chicago, Rock Island and El Paso Railway Co., Chicago, Rock Island & Gulf Railway Co., Chicago, Rock Island & Pacific Railway Co., Chicago Short Line Railway Co., Chicago, St. Paul, Minneapolis & Omaha Railway Co., Chicago Southern Railway Co., Myron J. Carpenter, Receiver Thereof; Chicago Terminal Transfer R. R. Co., John N. Faithorn, Receiver Thereof; Chicago, West Pullman & Southern Railway Co., Cincinnati & Muskingum Valley R. R. Co., Cincinnati, Hamilton & Dayton Railway Co., The Cincinnati, Lebanon & Northern Railway Co., The Cincinnati, New Orleans & Texas Pacific Railway Co., The Cincinnati Northern R. R. Co., The Cleveland, Akron & Columbus Railway Co., The Cleveland, Cincinnati, Chicago & St. Louis Railway Co., Coal & Coke Railway Co., Colfax Northern Railroad Co., The Colorado & Southeastern Railway Co., The Colorado & Southern Railway Co., The Colorado & Wyoming Railway Co., The Colorado Midland Railway Co., Colorado Southern, New Orleans & Pacific R. R. Co., Colt's Express Company, Columbia, Newberry & Laurens R. R. Co., Cornwall R. R. Co., Cornwall & Lebanon R. R. Co., Coudersport & Port Allegheny R. R. Co., Crittenden R. R. Co., Crooked Creek R. R. & Coal Company, Cumberland & Pennsylvania R. R. Co., The Cumberland Valley R. R. Co., Dansville & Mt. Morris R. R. Co., Dardanelle, Ola & Southern Railway Co.,

The Dayton & Union R. R. Co., Delaware & Eastern Railway Co., The Delaware & Hudson Company, The Delaware, Lackawanna & Western R. R. Co., The Denison & Pacific Suburban Railway Co., The Denver & Rio Grande R. R. Co., Des Moines, Iowa Falls & Northern Ry. Co., Detroit & Charlevoix R. R. Co., Detroit & Mackinac Railway Co., Detroit & Toledo Shore Line R. R. Co., Detroit, Toledo & Ironton Railway Co., Geo. K. Lowell, Benj. S. Warren, Thos. D. Rhodes, Receivers Thereof; Devalls Bluff Navigation Company, Duluth, South Shore & Atlantic Railway Co., The Dunkirk, Allegheny Valley & Pittsburgh R. R. Co., East Jersey Terminal & R. R. Company, East Jordan & Southern R. R. Co., Eastern Railway Company of New Mexico, Eastern Steamship Company, El Dorado & Bastrop Railway Co., Elgin, Joliet & Eastern Railway Co., Elizabethport Lighterage Company, El Paso & Northeastern Railway Co., El Paso & Northeastern R. R. Co., El Paso & Rock Island Railway Co., El Paso & Southwestern R. R. Co. of Texas, El Paso & Southwestern R. R. Co., Erie R. R. Co., Escanaba & Lake Superior R. R. Co., Evansville & Indianapolis R. R. Co., Evansville & Terre Haute R. R. Co., Fairchild & Northeastern Ry., Farmerville & Southern R. R. Co., Fonda, Johnstown & Gloversville R. R. Co., Fort Dodge, Des Moines & Southern R. R. Co., Ft. Smith & Western R. R. Co., Ft. Wayne, Cincinnati & Louisville R. R. Co., Ft. Worth & Denver City Railway Co., Ft. Worth & Rio Grande Railway Co., Frontier Steamboat Co., Fullers Express Company, Gainesville Midland Railway, Galt, Preston & Hespeler Railway Co., Galveston, Harrisburg & San Antonio Railway Co., Galveston, Houston & Henderson R. R. Co., Genesee & Wyoming R. R. Co., Georges Valley R. R. Co., Georgia R. R., Georgia & Florida Railway, The Georgia, Florida & Alabama Railway Co., Georgia Northern Railway Company of Georgia, Georgia Southern & Florida Railway Co., The Gettysburg & Harrisburg Railway Co., Goodrich Transit Company, Grafton & Upton Railroad Co., Grand Rapids & Indiana Railway Co., Grand Trunk Rail-
6 way Co., The Great Northern Railway Co., Great Western Railway Co., Green Bay & Western Railroad Co., Gulf, Colorado & Santa Fe Railway Co., Gulf Line Railway Co., Gulf & Ship Island R. R. Co., Hardwick & Woodbury R. R. Co., Hartford & New York Trans. Co., Hocking Valley Railway Co., Hoosac Tunnel & Wilmington R. R. Co., Hudson Navigation Company, Hunters Run & Slate Belt R. R. Co., The Huntington & Broad Top Mountain R. R. & Coal Company, Houston & Shreveport R. R. Co., Houston & Texas Central Rail Road Co., The Houston, East & West Texas Railway Co., Illinois Central R. R. Co., Illinois, Iowa & Minnesota Railway Co., Illinois Northern Railway, The Illinois Southern Railway Co., Illinois Terminal R. R. Co., The Illinois Valley Belt R. R. Co., Indiana Harbor Belt R. R. Co., Indianapolis Southern R. R. Co., Intercolonial Railway Co., International & Great Northern R. R. Co., P. J. Freeman, Receiver Thereof; Iola & Northern R. R. Co., Iowa Central Railway Company, Iowa & St. Louis Railway Co., Irondale, Bancroft

& Ottawa Ry. Co., Ironton R. R. Co., Jamestown, Chautauqua & Lake Erie Railway Co., Kalamazoo, Lake Shore & Chicago Railway Co., The Kanawha & Michigan Railway Co., Kane & Elk R. R. Co., Kanona & Prattsburgh Railway Co., The Kansas City, Clinton & Springfield Railway Co., The Kansas City, Mexico & Orient Railway Co., Kansas City, Mexico & Orient Railway Co. of Texas, The Kansas City Southern Railway Co., The Kansas Southwestern Railway Co., Kewaunee, Green Bay & Western Railway Co., Kingston & Pembroke Railway Co., La Crosse & Southeastern Railway Co., The Lake Erie, Alliance & Wheeling R. R. Co., The Lake Erie & Western R. R. Co., Lake Michigan Car Ferry Transportation Company, The Lakeside & Marblehead R. R. Co., The Lake Shore & Michigan Southern Railway Co., Lake Superior & Ishpeming Railway Co., The Leavenworth & Topeka Railway Co., Leetonia Railway Co., The Lehigh & Hudson River Railway Co., Lehigh & Lackawanna R. R. Co., Lehigh & New England R. R. Co., Lehigh Valley R. R. Co., Little Falls & Dolgeville R. R. Co., Little Rock & Hot Springs Western R. R. Co., Little Rock & Monroe Railway Co., Lorain & West Virginia Railway Co., Louisiana & Arkansas Railway Co., Louisiana & Pacific Railway Co., Louisiana Railway and Navigation Company, Louisiana Western R. R. Co., Louisville & Nashville R. R. Co., Louisville, Henderson & St. Louis Ry. Co., Macon & Birmingham Railway Co., S. F. Parrott, Receiver Thereof; Macon, Dublin & Savannah R. R. Co., Maine Central R. R. Co., Maine Transportation Co., Maine Steamship Company, Mallory Steamship Company, Manchester & Oneida Railway Co., Manistee & Grand Rapids R. R. Co., Manistee & North Eastern R. R. Co., Manistique & Northern R. R. Co., Marietta, Columbus & Cleveland R. R. Co., Marinette, Tomahawk & Western Railway Co., Marquette & South-
7 eastern Railway Co., Maryyland & Pennsylvania R. R. Co., Maryland, Delaware & Virginia Railway Co., Merchants & Miners Transportation Company, Metropolitan Steamship Company and W. T. Cobb, Calvin Austin, and Able I. Culver, Receivers Thereof; Michigan Central R. R. Co., Midland Valley R. R. Co., Mineral Point & Northern Railway Co., The Minneapolis & St. Louis R. R. Co., Minneapolis, St. Paul & Sault Ste. Marie Railway Co., Mississippi River, Hamburg & Western Railway Co., Missouri & North Arkansas R. R. Co., Missouri, Kansas & Texas Railway Co., Missouri, Kansas & Texas Railway Co. of Texas, Missouri, Oklahoma & Gulf Railway Co., The Missouri Pacific Railway Co., Mobile & Ohio R. R. Co., Mobile, Jackson & Kansas City R. R. Co., The Monongahela Connecting R. R. Co., The Monongahela R. R. Co., Montour R. R. Co., Montpelier & Wells River R. R. Co., Morgan's Louisiana & Texas R. R. & S. S. Co., Morgantown & Kingwood R. R. Co., Morristown & Erie R. R. Co., Moshassuck Valley R. R. Co., Munising Railway Co., Murray's Line, Muscatine North & South Railway Co., Mt. Jewett, Kinzua & Riterville Railway Co., Narragansett Pier R. R. Co., Nashville, Chattanooga & St. Louis Railway, Natchez & Louisiana

Railway Transfer Co., Natchez & Southern Railway Co., Newark Bay Short Line, Newark Despatch Boat Line, Newark Express & Transportation Co., Newark & Marion Railway Co., New England Navigation Co., New Jersey & New York R. R. Co., New Jersey & Pennsylvania R. R. Co., New Orleans & Northeastern R. R. Co., New Orleans & Northwestern R. R. Co., Newton & Northwestern R. R. Co., New Park & Fawn Grove R. R. Co., Newport & Wickford R. R. & Steamboat Co., New York & Baltimore Transportation Company, New York & Hastings Steamboat Company, New York & Hudson Steamboat Company, The New York & Long Branch R. R. Co., New York & Ottawa Railway Co., New York & Pennsylvania Railway Co., The New York Central & Hudson River R. R. Co., The New York, Chicago & St. Louis R. R. Co., The New York, New Haven & Hartford R. R. Co., New York, Ontario & Western Railway Co., New York, Philadelphia & Norfolk R. R. Co., New York, Susquehanna & Western R. R. Co., Niagara, St. Catharines & Toronto Navigation Co., Niagara, St. Catherine & Toronto Railway Co., Norfolk & Southern Railway Co., H. K. Woolcott & Hugh M. Kerr, Receivers Thereof; Norfolk & Western Railway Co., Norfolk & Washington Steamboat Co., Northampton & Bath R. R. Co., The Northern Central Railway Co., The Northern Ohio Railway Co., Northern Pacific Railway Co., Northwestern Pacific R. R. Co., Norwich & New York Propeller Co., Ocean Steamship Co. of Savannah, Oklahoma Central Railway Co., Asa E. Ramsey, Receiver; Old Dominion Steamship Company, Opelousas, Gulf & Northeastern Railway Co., The Orange & Northwestern R. R. Co., The
8 Oregon R. R. & Navigation Company, Oregon Short Line R. R. Co., Orford Mountain Railway Co., Ottawa & New York Railway Co., Pacific Coast Steamship Company, Paris & Great Northern Railway Co., The Pecos & Northern Texas Railway Co., The Pecos River R. R. Co., The Pemberton & Highstown R. R. Co., Pennsylvania Company, The Pennsylvania R. R. Co., Peoria Railway Terminal Company, Pere Marquette R. R. Co., Pere Marquette Line Steamers, Peoria & Pekin Union Railway Co., Perris & Lake View Railway Co., Philadelphia, Baltimore & Washington R. R. Co., Philadelphia & Reading Railway Co., Pittsburgh & Moon Run R. R. Co., The Pittsburgh, Chartiers & Youghiogheny Railway Co., The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Co., The Pittsburgh & Lake Erie R. R. Co., The Pittsburgh, Lisbon & Western R. R. Co., The Pittsburgh, Shawmut & Northern R. R. Co., Frank S. Smith, Receiver; Pontiac, Oxford & Northern R. R. Co., R. J. Lonsbury, Receiver; Portland & Boothbay S. S. Co., Port Chester Transportation Company, Prescott & Northwestern R. R. Co., Quebec, Montreal & Southern Ry. Co., Quincy, Omaha & Kansas City R. R. Co., Rahway Valley R. R. Co., Rapid R. R. Co., Raritan River R. R. Co., Reynoldsville & Falls Creek R. R. Co., Richmond Belt Railway Co., Richmond, Fredericksburg & Potomac Rail Road Co., Rock Island Southern Railroad Co., Rutland R. R. Co., St. Johnsbury & Lake Champlain R. R. Co., The St. Joseph & Grand Island Railway Co., St. Lawrence & Adirondack Railway Co.,

St. Louis & Hannibal Railway Co., St. Louis & San Francisco R. R. Co., St. Louis, Brownsville & Mexico Railway Co., St. Louis & El Reno & Western Railway Co., St. Louis, Iron Mountain & Southern Ry. Co., St. Louis, Kansas City & Colorado R. R. Co., St. Louis Merchants Bridge Terminal Railway Co., St. Louis, San Francisco & Texas Railway Co., St. Louis Southwestern Railway Co., St. Louis Southwestern Railway Company of Texas, St. Louis, Watkins & Gulf Railway Co., St. Maurice Valley Railway Co., St. Paul & Des Moines R. R. Co., San Antonio & Aransas Pass Railway Co., San Diego, Cuyamaca & Eastern Railway Co., San Diego Southern Railway Co., Sandy River & Rangeley Lakes R. R., Santa Fe Refrigeration & Despatch Co., Saugerties & New York Steamboat Company, Seaboard Air Line Railway, Sheffield & Tionesta Railway Co., The Silver Lake Railway Co., Somerset Railway Co., South Brooklyn Railway Co., Myron J. Carpenter, Receiver; The South Georgia & West Coast Railway, The Southern Indiana Railway Co., The Southern Kansas Railway Company of Texas, The South Georgia R. R. Co., South Manchester R. R. Co., Southern Railway Co., Southern Railway Co. in Mississippi, Stanley, Merrill & Phillips Railway Co., The Staten Island Rapid Transit Railway Co., Stephens and Condit Transportation & Forwarding Company, Stephenville North & South Texas Railway Co., Stewartstown R. R. Co., Sugarland Railway Co., Sunset R. R. Co., Susquehanna, Bloomsburg & Berwick Rail Road Co., Susquehanna & New York R. R. Co., Tennessee Central R. R. Co., Terminal R. R. Ass'n of St. Louis, Texarkana & Ft. Smith Railway Co., The Texas & Gulf Railway Co., Texas & New Orleans R. R. Co., The Texas & Pacific Railway Co., Texas Central R. R. Co., Texas City Terminal Co., Texas Midland R. R. Co., Texas Southern Railway Co., Thousand Islands Railway Co., Tidewater Transportation Company, Tionesta Valley Railway Co., The Toledo & Ohio Central Railway Co., Toledo, Peoria & Western Railway Co., The Toledo Terminal R. R. Co., Toledo, St. Louis & Western Rail Road Co., Toluca, Marquette & Northern R. R. Co., James E. Hurley, Syrus Leland & W. H. Boyce, Receivers; Toronto, Hamilton & Buffalo Railway Co., Tremont & Gulf Railway Co., The Trinity & Brazos Valley Railway Co., The Tuckerton R. R. Co., Union Pacific R. R. Co., Union R. R. Co., Union Springs & Northern Railway Co., Ursina & North Fork Railway Co., Valley R. R. Co. of Pa., The Valley R. R. Co. of Virginia, Vandalia R. R. Co., Vicksburg, Shreveport & Pacific Railway Co., Virginia & Southwestern Railway Co., The Wabash R. R. Co., The Wabash, Chester & Western R. R. Co., The Wabash-Pittsburgh Terminal Railway Co., H. W. McMaster & H. Skelding, Receivers Warners Philadelphia & Wilmington Steam Propeller Line, Warren & Ouachita Valley Railway Co., Washington County Railway Co., The Washington, Potomac & Chesapeake R. R. Co., Washington Run R. R. Co., Washington Southern Railway Co., Waterloo, Cedar Falls & Northern Railway Co., Waupaca-Green Bay Ry., The Weatherford, Mineral Wells & Northwestern Railway Co., West Coast Ry. Co., Western & At-

lantic R. R. Co., West Jersey & Seashore R. R. Co., Western Maryland R. R. Co., B. F. Bush, Receiver; The Western Railway of Alabama, West Shore R. R. Co., West Side Belt R. R. Co., H. W. McMaster & H. Skelding, Receivers; West Virginia Northern R. R. Co., Wharton & Northern R. R. Co., The Wheeling & Lake Erie R. R. Co., B. A. Worthington, Receiver; Wichita Falls & Northwestern Railway Co., Wichita Falls & Northwestern Railway Company of Texas, Wichita Falls & Southern Railway Co., The Wichita Valley Railway Co., Wiggins Ferry Company, Wilkesbarre & Eastern R. R. Co., Williamsport & North Branch R. R. C., The Williams Valley R. R. Co., Wisconsin & Michigan Railway Co., Wisconsin & Northern R. R. Co., Wisconsin Central Railway Co., Wood River Branch R. R. Co., Wrightsville & Tennille R. R. Co., The Yazoo & Mississippi Valley R. R. Co., The Youngstown & Ohio River R. R. Co., The Zanesville & Western Railway Co., Defendants.

10 To the Honorable Interstate Commerce Commission:

The petition of the above named complainants respectfully shows:

1. That each of your complainants for a number of years continuously last past has been and now is engaged in the business of growing, buying, selling, packing and dealing in citrus fruits produced in Southern California, and shipping the same over the lines of railway of said defendant railroad companies, from points in California, to substantially all the cities and towns throughout the United States.

2. That each and every of said defendant railroad companies during all of the times in this petition referred to, was, and still is, engaged in the business of transporting passengers and property by railroad from California to various other states in the United States including the transportation of citrus fruits between the various points herein referred to, and in refrigerating and icing the same, and said defendant Santa Fe Refrigerator Despatch Company was and is engaged in the business of refrigerating and icing citrus fruits so transported, and furnishing refrigerator cars and ice therefor, and during all of said time each of said railroad companies and said refrigerator company and said other defendants, has been and still is a common carrier, and subject to the provisions of
11 an Act of Congress entitled "An Act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof and supplemental thereto.

3. That since your complainants have respectively been engaged in the business aforesaid, and during all the time herein mentioned, the citrus fruits, produced, bought, dealt in or packed by your complainants, have been transported by said defendant railroad companies as common carriers over their respective lines of railway to various points throughout the United States and elsewhere, and during all of said time your complainants have been and still are wholly dependent upon such transportation by said defendant railroad companies, in order to conduct their business, as aforesaid; that said defendant railroad companies have an absolute monopoly of the busi-

ness of transporting citrus fruits from all points in California, where such citrus fruits are produced, packed and shipped, and there are no other lines of railroad, or other available means for transportation for such citrus fruits from such California points to the markets where the same are shipped and sold.

4. That for a number of years last past, the defendant companies have maintained, charged and exacted from your complain-
12 ants and others similarly situated, joint rates on oranges, grape fruit, limes, mandarines, tangerines and citrons, in straight or mixed carloads, or in mixed carloads with lemons, of $1.15 per 100 pounds, from points in California, Nevada and Utah, to points in other states of the United States, which points are designated in Trans-Continental Freight Bureau East-Bound Tariff No. 7-B (I. C. C. No. 894), effective July 5, 1909, and the supplements thereto, as to certain territory, and in Tariff No. 3-H (I. C. C. No. 906), effective December 6, 1909, as to certain other territory, which tariffs have been duly filed in the office of this Honorable Commission through the medium of said Trans-Continental Freight Bureau, and as appears from said tariffs, the same have been concurred in by each of said defendant companies. That as appears from said tariffs the rates on said commodities are somewhat higher to certain points in the United States therein named, than the said rate of $1.15 per hundred pounds, on account of the fact that certain local rates are added to the through rate.

5. That for a number of years last past the defendant companies have maintained, charged and exacted from your complainants, and others similarly situated, joint rates on lemons in straight car-
13 loads of $1 per 100 pounds, from points in California, Nevada and Utah to points in other states of the United States, which points are designated in Trans-Continental Freight Bureau East-Bound Tariff No. 3-G (I. C. C. No. 889) effective June 5, 1909, as to certain territory, and in Tariff No. 7-B (I. C. C. 894), effective July 5, 1909, as to certain other territory, which tariffs have been duly filed in the office of this Honorable Commission through the medium of said Trans-Continental Freight Bureau, and as appears from said tariffs, the same have been filed under power of attorney or concurred in by each of said defendant companies. That as appears from the said tariffs the rates on lemons are somewhat higher to certain points in the United States therein named, than said rate of $1 per hundred pounds, on account of the fact that certain local rates are added to the through rate.

6. That said defendant, Southern Pacific Company, for a number of years last past, has maintained, charged and exacted from your complainants, and others similarly situated, certain charges for the refrigeration and icing of citrus fruits, originating at points on the lines of said defendants, Sonora Railway, Southern Pacific Co., Sunset Railroad Co., Maricopa & Phœnix Railroad Co., Northwestern Pacific Railroad Co., Phœnix and Eastern Railroad Co., and
14 destined to points in other states of the United States, as appears from Southern Pacific Company joint refrigeration

tariff No. 359-B (I. C. C. No. 3202), effective July 5, 1909, and filed with this Honorable Commission, and as appears therefrom said tariff has been concurred in by the other defendants hereto.

7. That for a number of years last past, said defendant, The Atchison, Topeka & Santa Fe Railway Co., and the other defendant railroad companies mentioned and concurring in the tariff hereinafter referred to, together with the defendant, the Santa Fe Refrigerator Despatch Company, have maintained, charged and exacted from your complainants, and others similarly situated, certain charges for the refrigeration and icing of citrus fruits from points in California and other states, to points in other states of the United States, as appears from "Santa Fe System" Tariff No. 8123-C (I. C. C. No. 4814) effective July 5, 1909, which tariff has been duly filed with this Honorable Commission, and concurred in by the other defendant companies, as appears from said tariff.

8. That said defendant, San Pedro, Los Angeles and Salt Lake Railroad Company, has for a number of years last past maintained, charged and exacted from your complainants, and others similarly situated, certain charges for the refrigeration and icing of citrus fruits originating at points on the line of said defendant company, and destined to points in other states of the United States, as appears from the Joint Refrigeration Tariff of said company, I. C. C. No. 280, effective July 19, 1909, which said tariff has been duly filed with this Honorable Commission and concurred in by the other defendant companies, as appears from said tariff, and the supplements thereto.

9. That in order to avoid the excessive charges for refrigeration and icing exacted by said defendants, a number of your orators have at a large expense, erected and equipped refrigeration plants, for the purpose of pre-cooling and pre-icing shipments of citrus fruits; that prior to the issuance of said Southern Pacific Company Joint Refrigeration Tariff, No. 359-B (I. C. C. No. 3202), and of said "Santa Fe System" Tariff, No. 8123-C (I. C. C. No. 4814), and of said San Pedro, Los Angeles and Salt Lake R. R. Company Tariff (I. C. C. No. 280), effective July 5th and July 19th, 1909, respectively, no charges were collected or provided for in any tariffs issued by any of said defendants, for the refrigeration and icing of shipments of citrus fruits, where the cars were pre-iced, or pre-cooled and pre-iced, by the shipper, with instructions not to re-ice the same in transit or otherwise; that by concert of action the said defendants last named, during the month of July 1909, gave out and announced that on and after said July 5th and July 19th, respectively, they would assess a charge on all carloads of citrus fruit pre-iced, or pre-cooled and pre-iced by the shipper, and offered for shipment with instructions, "do not re-ice in transit," of $30 per car of 32,000 pounds or less, excess weight to be charged for at .09375 cents per 100 pounds, and said charge was provided for in said tariffs last named, which have been duly filed with this Honorable Commission, and concurred in by the other defendants hereto, and are now in force and effect.

That inasmuch as said defendants perform no refrigerating or icing service whatever where the cars are pre-iced, or pre-cooled and pre-iced by the shipper, no charge should be made by any of said defendants, and any such charge therefor is illegal, null and void.

10. That by concert of action the defendants named herein, during the month of October, 1909, gave out and announced that on November 15, 1909, they would increase their rates or charge for transporting lemons in straight carloads, so as aforesaid established for many years, 15 cents per hundred pounds from points in
17 California, Nevada and Utah, to various points in Minnesota, North Dakota, South Dakota, and Manitoba, as appears from Supplement No. 2 to Trans-Continental Freight Bureau, East-Bound Tariff No. 7-B (I. C. C. No. 894), so that the rate to substantially all points mentioned in said supplement would be $1.15 per hundred pounds, and to other points mentioned in said supplement, where locals are added to the through rate, $1.25, $1.35 and $1.40, respectively.

11. That by like concert of action the defendants named herein, during the month of October, 1909, gave out and announced that on December 6, 1909, they would increase their rates or charges for transporting lemons in straight carloads, so as aforesaid established for many years, from points in California, Nevada and Utah to substantially all points in the United States, other than those points already named in paragraph 10 hereof, 15 cents per hundred pounds, as appears from Trans-Continental Freight Bureau, East-Bound Tariff No. 3-H (I. C. C. No. 906), effective December 6, 1909.

12. That said proposed increases in the tariff rates for the transportation of lemons will result in an increased cost to your complainants of at least $200,000 per year; that said existing tariffs covering the transportation of lemons in straight carloads from points
18 in California, Nevada and Utah to said other points, always have been and still are more than fair, just, reasonable, and remunerative to the defendants, and the defendants have from time to time materially and substantially increased their net revenues and profits and their net surplus under said existing tariffs, and have been and still are earning large profits thereunder.

That as illustrating the unreasonableness of said proposed increase in the lemon rate, and the motives actuating the defendants in making the same, your complainants aver that nearly the entire world's supply of commercial lemons is grown and raised in Sicily and Southern Italy, which produced in the year 1908, 69,000 carloads thereof; that the entire consumption of lemons in this country during said year was about 12,000 carloads of which the growers of California furnished less than 40 per cent. (though their crops were sufficient to supply a larger part) the balance being supplied by the Sicilian and Italian growers; that on account of the much lower cost of labor in Italy and Sicily, and the low ocean rates from such countries to the United States, the lemon growers of California have for a number of years prior to August 5, 1909, been unable to successfully compete with the Italian and Sicilian growers in the
19 lemon markets of this country, and in consequence have been unable to dispose of their entire crop, and have suffered heavy

losses in their business; that for a long time prior to said last mentioned date, the lemon growers of California have agitated in favor of the imposition of a higher tariff duty on foreign lemons in order to enable the lemon industry of California to continue to exist, and in response to such agitation the Congress of the United States, on August 5, 1909, increased the tariff rate on foreign lemons from one cent to one and one-half cents a pound, and thus would have enabled your complainants, and others similarly situated, to substantially dispose of their crops; but upon the passage of said tariff all the defendants hereto, by concert of action, increased said lemon rate as aforesaid; that there is and has been no new condition which justifies said advance, and the same is an attempt on the part of said defendants to appropriate to themselves a large part of such increased tariff on foreign lemons which was imposed by Congress for the purpose aforesaid.

13. That all of said rates and said increased rates have been put into effect and all said other rates and charges have been and
20 are now maintained by concert of action among all of said defendants; that as your complainants are informed and believe, and therefore say, the said defendants have conspired to destroy and terminate all competition among them respecting the transportation of lemons, oranges, grape-fruit, limes, mandarines, tangerines and citrons, whether in straight or mixed carloads, and respecting the charges for the refrigeration and icing of such citrus fruits, and also to restrain trade and commerce between certain states, and to monopolize such inter-state commerce, and also to so increase the tariff rates for transporting lemons and to maintain the existing charges for the transportation of other citrus fruits and the charges for refrigerating and icing the same, and to so discriminate against your complainants and the business conducted by them as to make it unprofitable for them to further continue their said business; that said defendants caused a meeting of their Traffic Managers to be held for the purpose of having all of the defendants hereto come to a common understanding and agreement to terminate all competition between them and to, so as aforesaid, increase the tariff on lemons and to so as aforesaid exact refrigeration and icing charges on citrus fruits where the same are pre-iced, or pre-cooled and pre-iced, by the shipper; that thereupon all of the defendants hereto agreed in
21 October, 1909, to cease all competition between them on and after November 15, 1909, and December 6, 1909, respectively, so far as pertains to the transportation of lemons, and for the purposes aforesaid to uniformly adopt and put in force from and after said respective dates the excessive rates for the transportation of lemons herein referred to and complained of.

14. That said rates for the transportation of oranges, grape-fruit, lemons, mandarines, tangerines and citrons, whether in straight or mixed carloads, and said refrigeration and icing charges so as aforesaid maintained by said defendants are unreasonable, unjust, vexatious, excessive, extortionate and discriminatory, and the same are in violation of the provisions of said Act of Congress entitled "An Act

to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplemental thereto.

15. That except as aforesaid, said defendant railroad companies are separate, distinct and parallel competing lines of railroad engaged in interstate commerce; that such conspiracy, combination, confederacy and agreement, and such suppression of competition as aforesaid, with respect to the rates and charges for the transportation of oranges, lemons, grape-fruit, limes, mandarines, tangerines and citrons, were carried out through the medium of said Trans-Continental Freight Bureau which prepared and filed with the Interstate Commerce Commission under the direction of the defendants, the tariffs herein complained of.

16. That the aforesaid act and conduct of the defendants are in violation of said act known as "An Act to Regulate Commerce," approved February 4, 1887, and the acts amendatory thereof and supplemental thereto, and are in violation of an act of Congress known as "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, and known as the Sherman Act; that if said excessive and proposed rates therein complained of are permitted to be or remain in effect, the same will thereby prevent and end all competition between said defendants in the transportation and refrigeration of citrus fruits, within any part of the United States.

Wherefore, your complainants pray that the said defendants, and each of them, may be required to promptly answer the charges herein, and that after due hearing and investigation thereof, an order be made by this Honorable Commission, finding and adjudging unreasonable, unjust, extortionate, excessive and discriminatory, said proposed increased rates for the transportation of lemons in straight carloads, and also said rates for the transportation of oranges, limes, mandarines, tangerines, and citrons, whether in straight or mixed carloads, and also said rates for the refrigeration and icing of citrus fruits, and adjudging that said defendants have no right, power or authority to exact any refrigeration or icing charges whatever on citrus fruits pre-iced, or pre-cooled and pre-iced, by the shipper; that said charges as well as said increased rates for the transportation of lemons proposed by said defendants, be adjudged illegal, null and void; that this Honorable Commission after due investigation, declare the rate of $1.00 per hundred pounds, in carloads, for the interstate transportation of lemons, within the territory in this petition mentioned, as a just and reasonable rate for such service; that this Commission ascertain and declare what is a reasonable rate for the interstate transportation of oranges, grape-fruit, limes, mandarines, tangerines and citrons within the territory in this petition mentioned; that this Honorable Commission declare what is a just and reasonable rate for the refrigeration and icing of citrus fruits; and that an order issue requiring and commanding said defendants, and each of them, to cease and desist from said violations of the Act of Congress entitled "An Act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplemental thereto; and to make such

order for reparation and restitution by the defendants respectively to the complainants, as shall be found just and proper, and such other and further orders as to this Honorable Commission may seem necessary or proper in the premises.

And your complainants further pray for a speedy hearing hereof.

MAYER, MEYER, AUSTRIAN & PLATT,
American Trust Bldg., Chicago, Ills.;
JOSEPH H. CALL,
ASA F. CALL,
Los Angeles, California,
Attorneys for the Above Named Complainants.

1 Before the Interstate Commerce Commission.

Docket No. 3000.

ARLINGTON HEIGHTS FRUIT EXCHANGE et al.
v.
SOUTHERN PACIFIC COMPANY et al.

Separate Answer of San Pedro, Los Angeles & Salt Lake Railroad Company.

San Pedro, Los Angeles & Salt Lake Railroad Company, one of the above named defendants, for its separate answer to the complaint filed in this proceeding, respectfully says:

I.

It admits the allegations contained in paragraphs one and two of said complaint.

II.

For answer to paragraph three of said complaint, this defendant denies that the complainants or any of them are any more dependent upon the defendant railroad companies for the transportation of their products and the conduct of their business than are any other of the agriculturalists and horticulturalists of California, and of the United States generally, and, except in the sense that the defendants named constitute nearly all of the railroads of the United
2 States which handle and transport citrus fruits, this defendant denies that said defendants have an absolute or any monopoly of such business of transporting citrus fruits, and this defendant, while admitting that there are at present no other lines of railroad or other available means of transportation for such citrus fruits from California to the markets where the same are shipped and sold than over the lines of railroad of the defendants, this defendant says that said defendants constitute and are nearly all of the railroads and common carriers of the United States.

III.

This defendant admits the allegations contained in the 4th, 5th and 8th paragraphs of said complaint.

IV.

Answering the 9th paragraph of said complaint, this defendant denies that its charges for refrigeration and icing are or have been excessive, and denies that for the purpose of avoiding said charges for refrigeration and icing, a number or any of the complainants have, at large expense, or otherwise, erected and equipped refrigeration plants for the purpose of pre-cooling and pre-icing shipments of citrus fruits, but this defendant says, while admitting that some of said complainants have erected and equipped such plants, that said plants were erected and equipped in order to secure the better preservation of said citrus fruits while the same are being prepared and awaiting shipment, and while being transported, and for the purpose of avoiding loss and damage in decay or deterioration; it denies that prior to the issuance of Tariff I. C. C. No. 280, referred to in
3 said complaint, this defendant had no tariff providing for charging and collecting refrigeration and icing of shipment of citrus fruits where the cars were pre-iced, or pre-cooled and pre-iced by the shipper; it denies that by any contract of action between said defendants, said tariff I. C. C. No. 280 was filed with the Interstate Commerce Commission by this defendant.

This defendant further denies that it performs no refrigeration or icing service where cars are pre-iced, or pre-cooled and pre-iced by the shipper, but says that where shipments have been pre-iced, or pre-cooled and pre-iced by the shippers, it is necessary in order to preserve said shipments from decay and deterioration, to re-ice the same en route, and this defendant, in order to protect itself from loss and damage on account of the transportation of such shipments, is required and forced to re-ice such shipments, even though the shipper may offer said shipments with instructions not to re-ice the same in transit; defendant further says that the charges made for such re-icing as specified in said Tariff I. C. C. No. 280, are reasonable and just.

V.

This defendant further denies that by any concert of action other than concurrence in the tariffs referred to in paragraphs 10 and 11 of said complaint, the defendants announced or agreed upon an increase in the rates and charges for the transportation of lemons in straight carloads to the points mentioned in said paragraph 10, or to the points mentioned in paragraph 11 of said complaint.

4 VI.

For answer to the 12th paragraph of said complaint, this defendant says that as to the allegations that said proposed increase in the tariff rates on lemons will result in the increased cost to complainants of at least $200,000 per annum, this defendant has no

knowledge or information sufficient to answer the same, and therefore denies said allegations and leaves the complainants to their proofs in that regard.

This defendant denies that the charges named in the tariffs referred to in paragraph 12 of the complaint, covering the transportation of lemons in straight carloads from points in California, Nevada and Utah, to the points named in the complaint, have been or are, fair, just, reasonable or remunerative to the defendants, and denies that the charges specified in said tariff materially or substantially increased the net revenue and profits of this defendant, or increased its net surplus to any material extent, and it denies that it is or has been earning large profits under said tariffs.

Answering the second subdivision of paragraph 12 of said complaint, this defendant has no knowledge or information as to the allegations therein contained with respect to the supply of commercial lemons grown and raised in Sicily and Southern Italy, and therefore denies the same and leaves the complainants to their proofs concerning the same, as well also as to the consumption of lemons in the United States, and as to the amount of lemons furnished by the California growers.

5 Defendant further denies that the lemon growers of California have for a number of years prior to August 5th, 1909, been unable to successfully compete with the Italian and Sicilian growers in the lemons markets of the United States, or that in consequence of such competition of said lemon growers of California have been unable to dispose of their entire crop, or have suffered heavy losses in their business.

Defendant denies that by concert of action, or because of the passage of the tariff law referred to in said paragraph 12, the lemon rate complained of was increased, and it denies that there is or has been no new condition which justifies such advance, and denies that such advance is an attempt on the part of the defendants to appropriate to themselves a large or any part of the increased tariff on foreign lemons; it denies that the increase of the duty on lemons was necessary for the lemon industry to continue to exist.

VII.

For answer to the 13th paragraph of said complaint, this defendant denies that all or any of said rates, or any of the said increased rates have been put into effect, or that said rates have been or are maintained, by concert of action among said defendants, other than that the said defendants have concurred in the tariffs on file with the Interstate Commerce Commission; and this defendant denies that it has conspired with any of the other defendants to destroy or terminate competition among themselves in respect of the transportation of lemons, oranges, grape-fruit, limes, mandarines, tangerines and citrons in any way whatever; that with respect to refrigeration and icing such shipments, it denies

6 that it has conspired with any of the other defendants, or that there is any conspiracy to restrain trade and commerce between certain states, or to monopolize interstate commerce, or to

increase the tariff rate for transporting lemons, or to maintain the existing charges for the transportation of other citrus fruits, or charges for the refrigeration or icing of same, or to so discriminate against the complainants and the business conducted by them as to make it unprofitable to further conduct said business.

Defendant further denies that the defendants caused a meeting of their Tariff Managers to be held for the purpose of having all of the defendants come to a common understanding and agreement to terminate all competition between them, or to do any of the things charges in said paragraph 13 of said complaint; it denies that in October 1909, or at any other time, the defendants agreed to cease all competition between them on and after November 15th, and December 6th, 1909 respectively, or at any other time, so far as pertains to the transportation of lemons, or for the other purposes mentioned in said paragraph, or at all.

VIII.

For answer to the 14th paragraph of said complaint, this defendant denies that said rates for the transportation of oranges, grape-fruit, lemons, mandarines, tangerines and citrons, whether in straight or mixed carloads, and the refrigeration and icing charges maintained by said defendants are, or any of them are, unreasonable, unjust, vexatious, excessive, extortionate or discriminative, or that the same are in violation of the provisions of the Act to regulate commerce, or any of the acts amendatory
7 thereof or supplemental thereto.

IX.

For answer to the 15th paragraph of said complaint, this defendant again denies that there is any conspiracy, combination, confederacy or agreement between themselves with respect to the matters charged in said complaint, or otherwise, or at all, and while it admits that said tariffs complained of were filed with the Interstate Commerce Commission through the medium of the said Transcontinental Freight Bureau, this defendant denies that such filing was for the purpose of carrying out any conspiracy, combination, confederacy or agreement between the said defendants, or was unlawful.

X.

For answer to the 18th paragraph of said complaint, this defendant denies that it has in any way violated the act known as the Act to regulate commerce, or any of the acts amendatory thereof or supplemental thereto, or that it has violated in any way the Act known as an Act to protect trade and commerce against unlawful restraints and monopolies, approved July 2, 1890, and known as the Sherman Act; it denies that if the rates and charges set forth in the tariff complained of are excessive, or that if permitted to be or remain in effect, the same will prevent or end all competition between said defendants in the transportation and refrigeration of citrus fruits in any part of the United States, or will in any degree prevent or end competition between the said defendants.

8 Wherefore, having answered fully, this defendant prays that it may be hence dismissed, and that the said complaint may be set aside.

SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY,
(Signed) By FRED A. WANN,
Traffic Manager.

(Signed) W. R. KELLY,
(Signed) A. S. HALSTED,
Counsel.

a Interstate Commerce Commission, Washington.

I, John H. Marble, Secretary of the Interstate Commerce Commission, do hereby certify that the record hereto attached contains a true copy of the original transcript of the stenographer's notes of that portion of the testimony taken before said Commission on March 23 and 24, 1910, at Los Angeles, California, in the case of Arlington Heights Fruit Exchange and others against Southern Pacific Company and others, docket No. 3000, the original of which is now on file and of record in the office of said Commission.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this 15th day of April, 1912.

[Seal Interstate Commerce Commission, 1887.]

JOHN H. MARBLE, *Secretary.*

b *Stenographer's Minutes.*

Before the Interstate Commerce Commission.

Docket No. 3000.

ARLINGTON HEIGHTS FRUIT EXCHANGE et al., Complainants,
vs.
SOUTHERN PACIFIC COMPANY et al., Defendants.

At Los Angeles, California.
Date, March 23rd, 1910.

1 Before the Interstate Commerce Commission.

Docket No. 3000.

ARLINGTON HEIGHTS FRUIT EXCHANGE et al., Complainants,
vs.
SOUTHERN PACIFIC COMPANY et al., Defendants.

LOS ANGELES, CALIFORNIA, *March 23rd*, 1910.

Before Commissioners Prouty and Lane.

Appearances:

Asa F. Call and Joseph H. Call (Los Angeles, California), and Francis E. Matthews, of Mayer, Meyer, Austrian & Platt, (Chicago, Illinois), for the complainants.

F. C. Dillard, P. F. Dunne, and C. W. Durbrow, for the Southern Pacific Company, Oregon Railroad & Navigation Company, Oregon Short Line Railroad Company, Sunset Railway Company, Northwestern Pacific Railroad Company, Galveston, Harrisburg & San Antonio Railway Company, Texas & New Orleans Railroad Company, Morgan's Louisiana & Texas Railroad & Steamship Company, Union Pacific Railroad Company, El Paso & Northeastern Railway Company, El Paso & Northeastern Railroad Company, El Paso & Rock Island Railway Company, El Paso & Southwestern Railroad Company of Texas, El Paso & Southwestern Railroad Company.

2 T. J. Norton (Chicago, Illinois) and E. W. Camp (Los Angeles, California), for the Atchison, Topeka & Santa Fe Railway Company, Gulf, Colorado & Santa Fe Railway Company, Northwestern Pacific Railroad Company, Pecos & Northern Texas Railway Company, Pecos River Railroad Company, Santa Fe Refrigerator & Despatch Company, Southern Kansas Railway of Texas, and Texas & Gulf Railway Company.

W. R. Kelly and A. S. Halsted (Los Angeles, California), for the San Pedro, Los Angeles & Salt Lake Railroad Company.

Harry L. Titus, for the San Diego, Cuyamaca & Eastern Railway and the San Diego Southern Railway.

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Commissioner Prouty: We will proceed now with No. 3000, the Arlington Heights Fruit Exchange against various railroad companies. Who appears for the complainant?

Mr. Asa F. Call: I appear with my brother, Joseph H. Call, and the firm of Mayer, Meyer, Austrian & Platt, of Chicago; Mr. Matthews is here representing that firm.

Commissioner Prouty: You appear for all of the complainants?

Mr. Call: We appear for all of the complainants. We all appear for all the complainants.

Commissioner Prouty: Without attempting to call the names of all the numerous defendants, we will take the appearances of the defendants who are present. Mr. Durbrow, whom do you represent?

Mr. Durbrow: The Southern Pacific Company and the El Paso contentions of the complainants in this present hearing involve four & Southwestern Lines, a list of which I will hand to the reporter; also the Oregon Railroad & Navigation Company, the Oregon Short Line, the Sunset Railway, Northwestern Pacific Railway, Galveston, Harrisburg & San Antonio Railway, Texas & New Orleans Railroad Company, Morgan's Louisiana & Texas Railroad & Steamship Company, and the Union Pacific.

7 Commissioner Prouty: Mr. Norton, whom do you represent?

Mr. Norton: We appear for the Atchison, Topeka & Santa Fe Railway Company, the Eastern Railway Company of New Mexico, the Gulf, Colorado & Santa Fe Railway Company, the Northwestern Pacific Railway Company, Pecos & Northern Texas Railway Company, Pecos River Railroad Company, Santa Fe Refrigerator & Despatch Company, Southern Kansas Railway Company of Texas, the Texas & Gulf Railway Company. Mr. E. W. Camp and T. J.

Norton appear for those companies, and on request of Harry L. Titus, we enter his appearance for the San Diego, Cuyamaca & Eastern Railway Company, and the San Diego Southern Railway Company.

Commissioner Prouty: Are there any other appearances for other defendants?

(No response.)

Commissioner Prouty: Mr. Call, do you desire to make any statement preliminary to the introduction of testimony?

Mr. Call: Yes, your Honor. I might say very briefly that the contentions of the complainants in this present hearing involve four propositions:

First, and the proposition which brought on this controversy at this present time, is the lemon rate from California to all eastern points. This rate has been a blanket rate from the beginning to most eastern points; in fact, all points east of the Rocky
8 Mountains, excepting southeastern territory; and since 1904 the rate has been $1. Previous to that time the regular rate had been $1.25 per hundred pounds. It developed during the years 1902, 1903 and 1904, while the citrus rate case was before the Commission for consideration and testimony was being taken, that the lemon rate of $1.25 per hundred pounds then in force would not move the crop, and that the lemon industry was being destroyed by reason of the combination of the two factors, the foreign competition and the excessive rate. The acreage of lemons was being rapidly reduced, the groves decimated, trees budded over to oranges or dug up, production decreased, and it became apparent to all concerned that a substantial reduction of the industry was imminent. And in that crisis, after a conference of the different interests, it was decided to reduce the rate, first, by the winter relief rate or emergency rate, it was called, while the price was at its lowest ebb, and later by an all year round rate of $1 per hundred pounds. The effect of this reduction was to enable the California growers and shippers to reach a larger market and get sufficient return to justify the continuance of the industry. And the result was a very rapid increase of acreage and production, so that the old basis of the lemon industry
9 was restored, and more than restored.

Now, the lemon industry is quite largely a labor proposition. Labor is a large element in the cost of production of the lemon. The growers had no reason to believe, and the railroads had no reason to believe, when this rate was reduced to $1, that there would be any change in the cost of producing a box of lemons in California, because we had no reason to believe that material would be reduced, or that labor would be reduced; therefore, there was no consideration which would lead anyone of intelligence to believe that conditions would afterward arise which would justify a restoration of the original rate of $1.25 or any part of it. And no notice was given to the industry or to anyone that it was the intention of the railway carriers to induce a large planting of lemons for the purpose of securing a large investment of capital in an immovable position, and after it was so invested to then raise the rate when those

interested in the business would be powerless to protect themselves against the rates. And, as a matter of fact, the evidence will develop before your Honors that there was no change in conditions, there was no decrease in cost of production, either in labor or material, or in cost of land or water or any other element,
10 and there was nothing, if your Honors please, to justify the advance in rates which was made last summer, excepting an increased protection which the Congress of the United States saw fit to grant to this industry in order to put it upon a competing basis with the Italian product. But when the act was passed increasing the tariff duty from one cent a pound to one cent and a half a pound, which took effect on the 9th day of August of last year, scarcely two months elapsed before the increase in rate was announced from $1 to $1.15, and that 15 cents will tell the story, as we will be able to demonstrate, not opinionate, but we will demonstrate, to your Honors, that that increase in rate means a great limitation of our marketing territory, cutting off a large amount of our markets, and means a lessening of the tonnage, a lessening of the acreage, and the destruction of a large percentage of the property. Because the price of lemons is fixed by the larger producer, and that is the importer of foreign lemons; and they import, with the cheap labor of Europe, substantially two-thirds of the amount of lemons consumed in this country; and with their very low ocean freights and their very low western freights from New York and New Orleans to the markets of the country, they are able to lay down the lemons for a great deal less money than California can produce it. The question then is simply this, when we get through
11 with this testimony, as I think all will agree, did Congress intend to help the carriers, or did they intend to help the industry?

Our next proposition is this, that we are a long way from market with our fruit. We cross a wide desert. The weather conditions are unfavorable for transporting ripe fruits, especially oranges. We have had a system of refrigerator and improved cars that have answered the purpose to a degree, and under that facility the industry has developed. But it is in a state of evolution. The refrigeration rates were high and the process not effective, for the reason that the car was a long distance on the desert before the fruit was sufficiently cooled to protect it. In this emergency the California producer discovered, together with the aid of the Government of the United States and their experts, systems for pre-cooling the fruit and shipping it as pre-cooled fruit, with one preliminary icing, what we call the pre-iced and pre-cooled shipment, which involves no expense to the railroads, and no responsibility in any way upon the carrier, as we contend. We can do that for half the money which they are charging for refrigeration, and get a great deal better results, and putting the fruit on the market in great deal better shape than we can by ordinary refrigeration, because the fruit is cooled here,
12 and it does not need to go over the desert and through the excessive heat which, to a degree, depreciates the quality of the fruit. So with this pre-cooling and pre-icing system we are enabled

to lay fruit down in the eastern markets in almost perfect condition, without decay, and at half the cost of refrigeration, and the carriers know it; they know it better than we do. And to prevent us from doing it, they have put an arbitrary charge of $30 a car upon our pre-cooled and pre-iced fruit, for doing nothing. They do not furnish any service, and it does not cost them a dollar, and they put it on there to prevent us from going on with this process of pre-cooling and pre-icing fruit, and in order to force us to pay their refrigeration charge.

Commissioner Lane: How is that set up, in a tariff?

Mr. Call: Yes, in a special tariff, and the special tariff reads this way, that for pre-cooled and pre-iced fruit, where the shipper puts on his shipping or billing instruction not to re-ice in transit, there is an arbitrary charge of $30.

Commissioner Prouty: That car starts, of course, with the bunkers filled with ice?

Mr. Call: Yes, with the bunkers filled with ice.

Commissioner Prouty: So that it is comparatively a pre-
13 cooled shipment, and the carrier transports the extra weight of the ice?

Mr. Call: The carrier transports the extra weight of the ice, and they say in their answers and have always said that the carrying of that ice inheres in the freight rate, that is, the higher rate from the Coast to eastern points, and they have always said the reason they justify that excessive freight rate is because they carried the ice, and it never has inhered in the refrigeration charge; and in fact, in any questions of letters we have had from them, they always say it inheres in the freight rate itself, which is $1.15 on oranges, and which is 20 per cent in excess of any other rate they have from this Coast.

Commissioner Prouty: What part of your oranges move under refrigeration?

Mr. Call: Half.

Commissioner Prouty: Probably more than half the oranges——

Mr. Call: Perhaps a little more, about half of the oranges move under refrigeration. And we contend if they will allow us to pre-cool and pre-ice this fruit, and not charge us for service they do not perform, and only charge us for the service they do perform, that we can revolutionize this business, and furnish the consumer with cheaper and better product.

14 Now, our third proposition is that the orange rate is too high. That question we had up before your Honors, and at a time when the orders of this Commission were not self-enforcing, and the recommendation was $1.10. We did not bring a suit to enforce the order of the Commission, and did not bring it up again before the Commission, because the railroads reduced the price to $1.15, and we let it stand at that for the time being. We claim that that rate is too high. We claim that even now the conditions have so changed since the former hearing of the orange rate case that it would justify an order from the Commission reducing even the $1.10 recommendation which was then made on account of the increase of tonnage.

Commissioner Prouty: Is your service satisfactory now?

Mr. Call: Well, the service is fair service this year and last year. It was bad the year after the reduction took place, but I presume there was some excuse for that. It is an eight day service now to Chicago, and I think that they come pretty near making it now, not over a day late.

Mr. Norton: We came considerably under it last year.

Mr. Call: Our information was that it was about 12 hours over last year, but perhaps we did not have a full record.

Mr. Durbrow: The evidence of the Southern Pacific shows
15 that we make the time to Chicago on the morning of the eighth day and that we have gone ahead of the schedule practically in all shipments.

Mr. Call: Now, the reason why this service of eight days, which is slow service, considered in the light of a perishable product—the reason that the service is fairly satisfactory to us is because, under the guidance of the Government, and especially under Mr. Powell's guidance out here, the shippers have learned that the orange will carry very well if it can be shipped free from mechanical injuries, and the handling of the fruit is very greatly improved. It is not yet perfect, and probably never will be perfect, but it is very greatly improved, so that the lengthened service does not do the injury now that it would have done four or five years ago when the Commission recommended a service of about six days to Chicago.

Commissioner Prouty: Six to seven days.

Mr. Call: I think six.

Commissioner Prouty: I do not know that the Commission has recommended anything, but as I remember, when I took the testimony in Los Angeles several years ago, it appeared that formerly the carriers had made about seven days between here and Chicago, and it was said that that would be a satisfactory service.

16 Mr. Call: Yes.

Commissioner Prouty: And the Commission suggested that the run ought to be made in seven or eight days.

Mr. Call: Now, we feel about it this way, that while eight days is a little long, we do not get any particular injury out of it except perhaps once in a while when we have a particular market to ship to or someone wants a car of fruit quick, or there is a season like the holiday season, when we want to get all the fruit in we can, and we might lose a little there; but we realize the fact that we now have a great industry, 40,000 cars last year of citrus fruits, and we are now furnishing a staple food product instead of a luxury, and we have to reach the table of the poor man, instead of the table of the rich man, as formerly, and we must broaden out this product to reach that consumption, and we must join with the railroads in furnishing a cheaper food product than we have furnished, and we want to do our share, and we will consent to the increased rate, if they will put on a fair rate, and what will be shown to be a fair rate, as compared with other products, and with their earnings, when the evidence is in. We want to meet them half way on that propo-

sition, and furnish just as low a product to the consumer as
17 we can. We have succeeded along those lines in furnishing a very greatly cheaper fruit to the consumer during the last ten years over the former period, while our prices to the grower, owing to our savings in different ways and improvements, have not deteriorated, and in some years they have been better than in former years, and some years perhaps a little lower, the price to the consumer has been decreased about 30 per cent; to the retailer I would say it has been decreased perhaps 30 per cent. We got very full statistics for the benefit of the Committees in Congress on that subject, gathered for twenty years from the daily papers from different representative sections of the country, showing the price lists, day by day and week by week, running over that period, and it shows about $1 cheaper to the retailer than it did in the decade preceding the one just last past. The country is consuming about half the amount of oranges, now, that they are of apples, and you see it is a great table product now, and we must get that product down to a reasonable basis to the consumer, or they will not eat it, and we feel that the orange rate under these conditions, considering the decreasing cost of transportation, and the increasing tonnage which we are furnishing, and the necessity for a decreased price to the consumer, and the very greatly and rapidly increasing earnings of the carriers on these trans-continental lines, the greatly excessive
18 rates that they are charging for all their products over any other railroad systems of the country of equal magnitude, justify us in demanding a reasonable price for transporting the orange product.

Our fourth proposition is that the refrigeration rate is too high, for something of the same reason, and that is that it is away in excess of the cost.

Commissioner Prouty: Do you attack the refrigeration rate in your petition?

Mr. Call: Yes, your Honors, we do. That is my understanding of it; that is our intention, and I believe we do. That is the most difficult proposition that we have to present here, and yet we think we can present you with facts that will give you some information and be more satisfactory to the Commission, and we hope to be able to give you more information than in any case you have had yet which I have read. We have tried to get the exact facts, and I think with the help of the defendants, and with such information as we can give, that we can give you perhaps the cost of this service; and we feel that under the circumstances the profit should not be excessive on this branch of the service to the carriers, because it is like the general tariff rate, it should be reduced to the minimum of profit, to enable us to put this fruit upon the market.
19 Upon that point, however, owing to the numerous icing stations, and owing to the fact that the carriers are paying for a large part of this service about twice what it is worth and twice what we would do it for, and twice what anybody else would do it for, it is difficult to get at perhaps exactly what would be right. We claim here they are making contracts for ice at four to five dollars a ton,

when they can buy it from anybody for $2.50. And we will furnish a bond to give them the ice for a series of years at just half what they pay for it at these icing stations; And whether they are doing it through ignorance of the value of ice, or whether they are doing it because they want to make the showing here of excessive cost, we are not advised; but I think when we get through with this case there will be a conclusion that either one or the other is probably true.

Before closing I would say that before proceeding with the testimony, we would like to be advised on some points. One is with regard to the information which we asked for, as to how much can be furnished to us, because that will facilitate the work.

Commissioner Prouty: Before you proceed any further, let me say that the case now under consideration is No. 3000, the
20 lemon case. I see that certain parties have come in since the appearances of the defendants were taken. The Salt Lake road seems to be represented now. Is there any other appearance for any other railroad?

Mr. Halsted: W. R. Kelly and A. S. Halsted appear for the San Pedro, Los Angeles & Salt Lake Railroad Company.

Commissioner Prouty: Who owns these pre-cooling stations?

Mr. Call: There are two pre-cooling stations; one is owned by the Redlands growers, and the other by the Pomona Association.

Commissioner Prouty: To what part of the shippers of citrus fruits would the facilities of those stations be open?

Mr. Call: These particular facilities are only open to the owners of those plants, a few hundred cars in each; but the other shippers generally have facilities; that is, they have access to facilities along the same lines. For instance, we have a contract with a large icing and refrigerating company in Los Angeles to perform the same service, so that that is available to anybody, and I think the contract is 10 or 15 cars a day, now under contract, besides these other plants, and they will take it at about the same rates and the same thing exactly, by running them in here, and under the pres-
21 ent tariff, if it is not changed on us, we have the opportunity of this pre-cooling in transit without extra charge. If they should put an extra switching charge on us, it might prohibit coming in here and doing that work, but I do not anticipate that.

Mr. Norton: That pre-cooling is not available to all shippers in the present situation. The Santa Fe has a pre-cooling plant at San Bernardino, which is available to all shippers in southern California.

Mr. Call: I was speaking of the private plants.

Commissioner Prouty: What charge do you make for the pre-cooling at San Bernardino?

Mr. Norton: It is included in the refrigerating charge.

Mr. Call: There is a reduced rate published now of $55 for the pre-cooling.

Commissioner Prouty: So if a shipper desires, he can ship his car to San Bernardino, and have it pre-cooled and sent on at the refrigeration charge?

Mr. Norton: I will let Mr. Chambers answer.

Mr. Chambers: That is correct.

Commissioner Prouty: We will not go into that now. I simply desired to know whether this pre-cooling practice was a gen-
22 eral one, or confined to certain shippers.

Mr. Call: I think I can truthfully and safely say that it is generally recognized as the coming method, and the railroads themselves have so recognized it, and are building, or have built pre-cooling stations of their own at Colton and San Bernardino, the assembling points for their trains, and that they offer these facilities at something like the refrigeration charge, but that charge is some $25 more than we can get the same service done for and we think in a better way, by contract with others, and by ourselves; so that the point with us is this, that if we can eliminate from the tariff the arbitrary charge for service not performed, competition will take care of the rest of it.

Commissioner Prouty: My thought was this, if the railroad company is obliged to carry your pre-cooled and pre-iced fruit without an additional charge, or for the same charge which it makes where the oranges are not under refrigeration, and are not pre-cooled, would not that thereby create a discrimination against the man who ships without pre-cooling, and who cannot pre-cool his fruit?

Mr. Call: Well, the proposition inheres in the rate itself. It can be taken care of on this hearing. If the general orange rate
23 is fixed on the theory that the carrying of the ice does not inhere in it, and does not justify any part of it, and the carrying of the ice is put on the refrigerator, it can be equalized that way, if it is thought that it would create a discrimination.

Commissioner Prouty: You asked for certain information, did you?

Mr. Call: We asked for certain information, and if we had that it might facilitate the work.

Commissioner Prouty: What was the character of that information.

Mr. Call: Statistical information in regard to the movement of cars and cost of refrigeration, and a long list which we have here.

Commissioner Prouty: You made service of something on the defendants, did you.

Mr. Call: We served it in ample time, I think. If there is anything, however, they did not have time to procure, we should not insist upon it, but we wanted to know what they had here sometime during the forenoon.

Commissioner Prouty: You may state, Mr. Norton, what information you are prepared to furnish, in answer to that request.

Mr. Norton: They served two notices on us in Chicago be-
24 fore I left there, and subsequently I got by telegraph a communication regarding a statement which they asked from us; a good part of what they have requested from us will be included in the preparation that we were making ourselves; and the remainder of their request is embodied in tabulations which we have prepared, and which we will now give them. I think in one or two particulars the entire detail is not possible to get. They asked for a

segregation of oranges and lemons away back at a time when our records would not permit that; but generally we have, with those which I now give to Mr. Call, including a complete set of the annual report of the company which is here——

Mr. Call: Does that include the icing contracts?

Mr. Norton: Yes. Mr. Leeds is to have the icing contracts, and we will include practically with our own case everything you have asked for.

Mr. Call: One further question I would like to ask——

Commissioner Prouty: Let us see if the Southern Pacific is prepared to furnish this information.

Mr. Durbrow: I am prepared to furnish the complainants with all the information asked for with the exception that, so far as the total number of pounds of citrus fruits and lemons carried over the line from 1900 to date, we cannot segregate, before 1904, between
25 oranges and lemons. With that exception we can cover that demand. And they have asked us to produce all the annual reports made to the stockholders from July, 1900, to date. We are unable to produce those reports. I think they are all on file with the Commission, but prior to 1906 they were all destroyed, and we have but one office copy in the office of the Auditor, and these gentlemen are at liberty to examine that at any time they wish.

Mr. Call: That is not material.

Mr. Durbrow: Another demand with which we are not able to comply is the production of all tariffs from 1885 to date. Our tariffs were likewise destroyed. We have furnished the counsel with some of the later tariffs, but of course they can have a reference to them.

Commissioner Prouty: The tariffs are all on file with the Commission, of course.

Mr. Durbrow: There are some contracts which they have asked for which——

Mr. Call: The Pacific Fruit Express?

Mr. Durbrow: We have the contract with the Pacific Fruit Express. We have but one copy, and you may take it and copy it.

Mr. Call: And your icing contract?

Mr. Durbrow: The Southern Pacific Company does not
26 have any icing contract. The Pacific Fruit Express is acting as our agent in furnishing refrigeration service to the shippers. We have substantially complied with the demands of the complainants with those few exceptions.

Commissioner Lane: Does the Southern Pacific Company own the Pacific Fruit Express?

Mr. Durbrow: No.

Commissioner Lane: Is that an entirely independent corporation?

Mr. Durbrow: It is an entirely distinct, separate and independent corporation. I understand the Pacific Fruit Express, the stock of the company probably may be owned by the same interests, but so far as the ownership is concerned, it is not owned by the Southern Pacific Company, and the Pacific Fruit Express, as the evidence in this case will develop, furnishes refrigeration service to other than

the Harriman Lines. For instance, the Salt Lake line; and it furnishes refrigeration service to eastern lines also.

Commissioner Prouty: Did your request extend to the Salt Lake road?

Mr. Call: Yes. We asked the Southern Pacific for the statistics of the Salt Lake road and the Salt Lake road also.

Mr. Halsted: They have asked the same information from
27 the Salt Lake road, covering a period from 1900. The Salt Lake road opened as a through road in 1905, and since that time during three of the citrus fruit seasons the road has been out of operation temporarily on account of washouts. We will be able to furnish most of the information requested, and the statements are now being furnished, and I will be able to hand them to the gentlemen at the afternoon session. There are one or two matters which we are not able to give; for instance, question 3, "What part of such annual shipments of citrus fruits and lemons respectively moved under ventilation over your lines, and what part were refrigerated." We are not able to tell that. We kept no record of that matter. But I think we will be able to furnish nearly everything covering the time since our road began operation.

Mr. Durbrow: If your Honors please, I might suggest that it might be well to have these exhibits considered in evidence for this reason, that the demand covers statements and data that we were intending to introduce.

Commissioner Prouty: We will allow the complainants to go on with their case, and if you desire, when you come to your case, you can make these exhibits part of your case.

Mr. Durbrow: Very well.

28 Commissioner Prouty: You may proceed, now.

Mr. Call: One further question I would like to ask, and that is, if it is the rule of the Commission that we may consider all of the official records and compilations before the Commission?

Commissioner Prouty: What do you mean by official records?

Mr. Call: I mean the records of the Commission and the tariff sheets on file, that we may make reference to them without the formal offer of them.

Commissioner Prouty: You may refer to the tariff sheets on file, and you may refer to the reports which the railroads make to the Commission, but you should, in the course of your case, call attention to the tariff sheets and reports which you desire to refer to.

Mr. Call: May that be done on the argument?

Commissioner Prouty: It may be done in your brief, providing you give the defendants sufficient notice of what you want to refer to, in order that they may verify it.

Mr. Norton: I should say we were unable to furnish a complete set of tariffs, but we will give a table of citations to all tariffs covering the business.

Mr. Call: I understand you also represent the Pacific Fruit
29 Express, Mr. Durbrow?

Mr. Durbrow: I am not appearing for the Pacific Fruit Express.

Mr. Call: Are they represented here?

Mr. Durbrow: Well——

Commissioner Prouty: Is the Pacific Fruit Express represented on this hearing?

Mr. Call: We asked them for certain information, and served a notice for certain information which would perhaps facilitate the hearing.

Commissioner Prouty: On whom did you serve your notice?

Mr. Matthews: On Mr. Seagrist, in Chicago.

Commissioner Prouty: What is his connection with that company?

Mr. Matthews: He is the Manager of the Company, and he accepted the notice.

Mr. Durbrow: I think any information relating to that company will be shown in our evidence.

Commissioner Prouty: They want the contract for the icing of the cars which your company has.

Mr. Matthews: We asked for detailed information.

Commissioner Prouty: We will get you that information
30 during the course of the hearing.

Mr. Durbrow: I will undertake to furnish as much information as can be furnished.

Commissioner Prouty: You may proceed, Mr. Call. You should have someone here who can give the information desired covering the Pacific Fruit Express, or the information which you have.

Mr. Call: I will call attention and offer certain statistical and tabulated information which we have compiled, and furnish a copy to the other side, and furnish the name of the statistician and compiler, so if counsel desire to cross examine any of them, we can produce the party here; and if not, perhaps it might be accepted without further formal proof. Most of them prove themselves, with reference to the tariff sheets. We first offer Exhibit 1, which is a history of the lemon rate from California and the orange rate.

Commissioner Prouty: It will be necessary to have those exhibits marked in some way, at some time.

Mr. Call: We will mark that Exhibit No. 1.

(Paper received, marked Complainants' Exhibit No. 1, received in evidence March 23rd, 1910, and same is attached hereto.)

31 Mr. Call: Complainants' Exhibit No. 2, table showing number of carloads of citrus fruits shipped from California.

(The paper above referred to was received in evidence and thereupon marked Complainants' Exhibit No. 2, received in evidence March 23rd, 1910, and same is attached hereto.)

Commissioner Prouty: Just one minute. Your first exhibit, the history of the lemon rate from California; I do not suppose the gentlemen for the defendants have examined that exhibit, so that they know whether they question its accuracy or not.

Mr. Norton: No.

Commissioner Prouty: Perhaps you had better put in these exhibits in this way now, and they will have an opportunity to ex-

amine them and raise any objection they care to later in the hearing.

Mr. Call: That was my thought, to offer them now with an opportunity for the defendants to examine them.

Commissioner Prouty: When the compilation is one made from the documents of the Commission it is not worth while to take much time now, because that can be verified at any time; but when
32 it is a compilation like your Exhibit No. 2, it might be otherwise; that would depend upon the testimony. But you may proceed with the exhibits now, and the defendants may indicate their objections after having had an opportunity to examine the exhibits.

Mr. Call: We can then furnish the information from which we made the compilation, and put the statistician on the stand. The third is a compilation from the records of the California Fruit Growers' Exchange, an organization which ships about half or more of the product. Probably it will agree with the defendants' records, showing the total number of cars of oranges and lemons shipped, moving under ventilation and refrigeration, during three seasons. That perhaps the defendants will be able to furnish more completely than this, by showing the whole movement of the product.

(The paper above referred to was received in evidence and thereupon marked Complainants' Exhibit No. 3, received in evidence March 23, 1910, and same is attached hereto.)

Mr. Call: Exhibit No. 4 is a table showing carloads of citrus fruits shipped from California weekly, showing the continuity of the shipment, and the continued use of the refrigeration service
33 and equipment.

(The paper above referred to was received in evidence, marked Complainants' Exhibit No. 4, received in evidence March 23, 1910, and same is attached hereto.)

Mr. Call: Exhibit No. 5, showing the export of lemons from Italy and the value and total of imports from a compilation and record made by G. Herold Powell of the Department of Agriculture, who was specially detailed to make an examination of this subject, and made a report to the Secretary of Agriculture.

Mr. Durbrow: Will you furnish us with a copy of that?

Mr. Call: That is not printed yet. We will furnish it to you later, during the noon hour.

Exhibit No. 6 is a statement of the importation of lemons through the various ports of entry in the United States, compiled by Mr. Drayton, formerly an Examiner for the Commission, and from the statistics of the Bureau of Commerce and Labor. He is not available now for examination.

Commissioner Prouty: Well, these are simply compilations from public documents?

Mr. Call: Yes.

(The paper above referred to was received in evidence and thereupon marked Complainants' Exhibit No. 6, received in evidence March 23, 1910, and same is attached hereto.)

34 Mr. Call: Exhibit No. 7 is a table of rates in cents per hundred pounds on Sicilian lemons, carloads, from the various ports of entry to various markets of the country in comparison with the California rate made from the Official Tariff Sheet, and the tariff references are at the foot of the compilation.

(The paper above referred to was received in evidence, and thereupon marked Complainants' Exhibit No. 7, received in evidence March 23, 1910, and same is attached hereto.)

Mr. Call: Exhibit No. 8 is a map showing the same matter, showthe same rates, with the same references.

(The paper above referred to was received in evidence, marked Complainants' Exhibit No. 8, received in evidence March 23, 1910, and same is attached hereto.)

Mr. Norton: What did you say Exhibit No. 8 is?

Mr. Call: The map is the same, it contains the same statistics as Exhibit 7, only it is put in the form of a map instead of a table.

Mr. Halsted: Have you another set of those exhibits?

Mr. Call: Yes. Now, Exhibit No. 9 is a table showing comparative rates on Florida oranges from Florida to various marketing
35 points, and also from California, showing those points where there is a difference in favor of Florida.

Mr. Norton: Is that under the recent decision?

Mr. Call: Yes, that is carried out under the recent decision, you will note, by the stars opposite each point where we have been able to get the Commission's rulings.

Commissioner Prouty: When you say a difference in favor of Florida, what do you mean by that?

Mr. Call: In the rate.

Commissioner Prouty: You have taken the rate from Florida, from what point?

Mr. Matthews: From the base point, with the addition of the 18.6 cents, the average from the producing point. There is a note on the bottom of the statement which shows that.

Commissioner Prouty: Well, that is 19.6 instead of 18.6. It was 19.6 per box, and not per hundred pounds.

Mr. Call: Of 100 pounds?

Commissioner Prouty: Not per hundred pounds, but per box.

Mr. Matthews: Mr. Drayton averaged that up, and was supposed to have brought it down to the hundred pound basis, and he said he did.

Commissioner Prouty: Well, I do not undertake to say it is
36 right or not, but that particular thing would be wrong if you added 18.6 per hundred pounds, because the rate was 19.6 per box, and the testimony indicated that on the Atlantic Coast Line. In the first trial of the case it was conceded that the average up to Jacksonville would be about 25 cents a box, but figures kept by the Atlantic Coast Line showing actual shipments for the years 1908 and 1909, showed that the average rate received by that company was 19.6 cents per box up to the base point.

(A paper was received in evidence and thereupon marked Complainants' Exhibit No. 9, received in evidence March 23, 1910, and same is attached hereto.)

Mr. Call: Complainant's Exhibit No. 10 is simply a compilation and computation showing the earnings per car on oranges and lemons shipped by the California Fruit Growers' Exchange, based on the average loading of cars of all minimums. It covers something over half of the product, and includes the earnings on the new car which the defendants have put into use this year, of a collapsible ice bunker, so that under ventilation it loads to the full length of the car, and increases the load very materially, and it shows these earnings.

(The paper above referred to was received in evidence, and
37 thereupon marked Complainants' Exhibit No. 10, received in evidence March 23, 1910, and same is attached hereto.)

Mr. Call: Complainants' Exhibit No. 11 is a statement of the claims paid each year to the California Fruit Growers' Exchange, and the percentage of such claims to freight, and at the bottom is a compilation from the Official Reports of the four defendant companies there named, of the average amount paid on all freights. Now, you will notice that in the last column the decimal point is placed differently, but means the same thing; that is, the average damage claims paid on citrus fruits is 1.4 per cent, and by the Southern Pacific, a fraction over 1.7 per cent, and the Santa Fe about the same.

(The paper above referred to was received in evidence, and thereupon marked Complainants' Exhibit No. 11, received in evidence March 23, 1910, and same is attached hereto.)

Mr. Norton: What is the purport of that exhibit, to what point is it offered?

Mr. Call: The perishable character of the product, as to the actual perishable character of the product, that it is no more perishable than your average freight, as shown by the actual
38 amount of damages paid.

Mr. Halsted: Your figures on Exhibit 11 show one tenth of one per cent; is that what you mean?

Mr. Call: That is the same per cent, that is the reason I explained that, that the way the decimal point is placed, that is the form you use in your reports, and it is the same, I take it.

Mr. Halsted: Then to make a comparison, there should be a zero and decimal point in front of the 1.5?

Mr. Call: I think our way is correct, and yours perhaps is wrong, but it is the same, it could not be any other way, it is one cent and a fraction.

Commissioner Prouty: Which exhibit do you call attention to now?

Mr. Call: To the table, Complainants' Exhibit No. 11. Our Exhibit No. 12 is a table showing earnings per car per mile on the average haul of average load of oranges and lemons, as we deter-

mined the average haul from the shipment of the Fruit Exchange, and including the average earnings on the new collapsible bunker car.

Mr. Norton: In the column "Oranges," what does 12.38 mean?

Mr. Call: It means the earnings per car mile.

39 Mr. Norton: Yes, in cents. I did not see that.

Mr. Call: Yes, what each car earns per car mile in cents.

(The paper above referred to was received in evidence, and thereupon marked Complainants' Exhibit No. 12, received in evidence March 23, 1910, and same is attached hereto.)

Mr. Call: Our Exhibit No. 13 is a table showing freight earnings per car on oranges moving under refrigeration or ventilation, as compared with earnings on cars pre-cooled and pre-iced; and on a pre-cooled and pre-iced car the load is much heavier, because if the fruit is all cool and does not need any ventilation, you can put in about all the car will hold.

Mr. Norton: Does that include our earnings on the ice?

Mr. Call: Your earnings on the ice?

Mr. Norton: Yes.

Mr. Call: I did not know you had any earnings on the ice.

Mr. Norton: Well, the Commissioner suggested we ought to be paid for hauling the ice.

(The paper referred to was received in evidence, and thereupon marked Complainants' Exhibit No. 13, received in evidence March 23rd, 1910, and same is attached hereto.)

40 Mr. Call: Our table 14 is a comparison of blanket commodity rates on native California products from points in California, Nevada and Utah as compared with the rate on lemons and oranges. That is with references to the tariffs.

(The paper above referred to was received in evidence and thereupon marked Complainants' Exhibit No. 14, received in evidence March 23, 1910, and same is attached hereto.)

Mr. Norton: Is the minimum shown anywhere on this table?

Mr. Call: We have one table there showing your minimum loads on these California products, but not in this one, however. This is simply a table of the rates.

Now, our Exhibit No. 15 is a comparative statement of rates and ton mile earnings on commodities appearing in the tariffs, showing the number of articles taking the different rates, which is simply a restatement of the same compilation.

Mr. Norton: No. 15 does not name any articles. You say forty-two articles.

Mr. Call: That is compiled from the preceding exhibit, simply showing the number of articles, for instance, taking the 75 cent rate and the number of articles taking the 85 cent rate, as a recapitulation of the preceding table.

41 (The paper above referred to was received in evidence, and thereupon marked Complainants' Exhibit No. 15, received in evidence March 23rd, 1910, and same is attached hereto.)

Mr. Call: Our Exhibit 16 is a comparison of blanket transcontinental rates on perishable commodities to or from California terminals, or North Pacific Coast terminals, compiled from the tariff sheets, the aim being to show the articles of the same class as shipped by the complainant, showing the minimum loads and the direction it moved with the rate, and showing also the references to tariff sheets from which the compilation is made.

(The paper above referred to was received in evidence, and thereupon marked Complainants' Exhibit No. 16, received in evidence March 23rd, 1910, and same is attached hereto.)

Mr. Call: Our Exhibit No. 17 is a table showing the ton mile revenue of the principal defendant railroads from 1896 to 1909. The figures carried out in ink are from more recent reports. These were obtained from the statistics of railways of the United States, published by the Commission.

(The paper above referred to was received in evidence and thereupon marked Complainants' Exhibit No. 17, received in evidence March 23rd, 1910, and same is attached hereto.)

42 Mr. Norton: This for the Santa Fe Railway, is that the entire system?

Mr. Call: It is so reported. I believe that is all of our tables that we care to call attention to at the present time.

Commissioner Prouty: The defendants may examine these exhibits, and after having examined them, may make such objection as they desire, or call for such information as they desire.

Mr. Call: Mr. Matthews wanted to make a further statement as to the way Mr. Drayton got at that Florida rate.

Commissioner Prouty: That statement may be entirely correct.

Mr. Matthews: That 18 cents was not added to the rate; it was reduced to a hundred-pound basis, and then added. I recall Mr. Drayton so stated in the letter to us.

Mr. Call: I would like to inquire whether Mr. Leeds and Mr. Seagrist are to be here.

Mr. Norton: Mr. Leeds is here.

Mr. Durbrow: Mr. Seagrist will be here, and also the local representatives of the Pacific Fruit Express will be here and counsel will have an opportunity to examine them. In fact, they will be my witnesses on direct examination.

43 Mr. Call: If the Commission desires, we will offer a witness at this time.

Commissioner Prouty: You may call some witness.

Mr. Call: I will call Mr. Woodford. He is the Manager of the California Fruit Growers' Exchange.

B. A. WOODFORD, was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Call: Mr. Woodford, how long have you been Manager of the California Fruit Growers' Exchange?

Mr. Woodford: Five years.

Mr. Call: Will you briefly state to the Commission the general nature and scope of the work of the Exchange?

Mr. Woodford: The California Fruit Growers' Exchange is composed primarily of some 5000 orange and lemon growers who unite themselves into some 100 different associations in the producing territory, who pick and pack the fruit and put it upon the car. These associations are for the most part united into a district composed of those who are contiguous to each other, and this district is denominated the District Exchange, of which there are 14. These district exchanges in turn unite into the California Fruit Growers' 44 Exchange, which is the agent or broker of its constituents.

Mr. Call: In brief, then, it is in the nature of a farmers' co-operative association for the marketing of the product?

Mr. Woodford: Co-operative association for the sale of the fruit.

Mr. Call: And the office of the central exchange is simply in a marketing way?

Mr. Woodford: The central office of the California Fruit Growers' Exchange has handled the marketing problem as an agent or broker for these various organizations and other matters at times which have come up in connection with the industry.

Mr. Call: And this central agency furnishes agencies throughout the country?

Mr. Woodford: In all the principal markets.

Mr. Call: In all the principal markets of the United States and——

Mr. Woodford: Canada and London, England.

Mr. Call: And are these various agencies employed by the central agency available to the various shippers, each and all the various shippers?

Mr. Woodford: The sales machinery is open to all con- 45 stituent members alike.

Mr. Call: Does the central exchange make sales and fix prices, or is that done by the different shippers?

Mr. Woodford: The shippers themselves control the matter of shipment and destination and price and all those features. The central office acts under the direction of the shipper, in all cases.

Mr. Call: What proportion of the citrus fruit of California does the Exchange and its affiliated associations now market?

Mr. Woodford: Last year between 58 and 59 per cent

Mr. Call: And is the percentage the same of lemons as it is of oranges?

Mr. Woodford: Approximately the same, a trifle more in lemons last year, I think 62 per cent.

Mr. Durbrow: Do you mean the entire citrus fruit of the state?

Mr. Woodford: Of the state of California.

Mr. Call: What proportion of this fruit is sold at auction?

Mr. Woodford: It varies in different years, but in recent years about 30 per cent.

Mr. Call: And at what cities do you have auctions where fruit is sold?

Mr. Woodford: Boston, New York, Philadelphia, Pitts-
46 burgh, Cleveland, Cincinnati, St. Louis, Baltimore and New Orleans.

Mr. Call: At those points is substantially all the fruit sold at auction?

Mr. Woodford: I think with the exception of an occasional car in New Orleans that all of our fruit is sold at auction at all these points.

Mr. Call: Previous to your assuming the management of the general exchange, what had been your experience in marketing fruit?

Mr. Woodford: I had been manager of one of these district exchanges for seven years, the Ontario-Cucamonga Fruit Exchange at Upland.

Mr. Call: Selling both oranges and lemons?

Mr. Woodford: Both oranges and lemons.

Mr. Call: And what is the extent of the country in which the great bulk of this fruit is produced?

Mr. Woodford: The great bulk of the citrus fruits of California is grown in San Bernardino, Riverside, Orange, Los Angeles and Tulare counties, although quite a number of other counties produce citrus fruits.

Mr. Norton: San Diego produces a good deal, doesn't it?

Mr. Woodford: San Diego and Ventura and Butte County in the north, quite a few oranges.

47 Mr. Call: Do you know the average price received last year for lemons marketed through the exchange?

Mr. Woodford: $2.08 per box f.o.b. California, approximately; it might be within a fraction of a cent.

Mr. Call: Do you know the average price received the year before?

Mr. Woodford: $2.02 per box f.o.b. the car.

Mr. Norton: $2.08 a box, was it last year, on lemons?

Mr. Woodford: $2.08 last season for lemons f.o.b. the car.

Commissioner Prouty: You are speaking of the sales made by your concern?

Mr. Woodford: By our concern, 62 per cent, approximately, of the business.

Commissioner Lane: How much will a box weigh?

Mr. Woodford: A box of lemons is taken by the carrier at 84 pounds, estimated weight, and the fruit will probably weigh—well, the box weighs about 10 pounds.

Commissioner Prouty: How many lemons in a box, about?

Mr. Woodford: You mean in count?

Commissioner Prouty: In count.

Mr. Woodford: 300 and 360, generally; sometimes a small proportion of larger and smaller lemons.

48 Mr. Call: Are the lemon markets of the country uniform or variable?

Mr. Woodford: The country can properly be divided in the sale of lemons into three great districts; that territory west of the Mississippi River, that territory between the Mississippi River and the Allegheny, and the Atlantic Coast territory, extending around along the Gulf into Louisiana and eastern Texas. The prices re-

ceived in the first named territory are much better, probably 50 cents a box, that is, a case, or about that, than those received in the second named territory. The prices received in the second named territory are still better than those received in the last named territory, which are low.

Commissioner Prouty: How are your sales divided in amount between those three territories?

Mr. Woodford: About half of the lemons are sold west of the Mississippi River.

Mr. Norton: That is the first territory?

Mr. Woodford: The first territory, and the remaining half into what might properly be divided into three, two thirds in the second named territory and one-third in the last named territory; that is, of course, approximately.

49 Mr. Call: That is, the second half might be divided into thirds?

Mr. Woodford: Yes, sir.

Commissioner Prouty: Do you sell lemons in New York City?

Mr. Woodford: At times, at certain times of the year. Our California lemons come in at about the same time in the fall, the first of the fall crop, as the Sicilian lemons do, but we are somewhat nearer the market than they are, and we generally have an exceedingly good market in New York on the first shipments of the new crop in the fall of the year, continued at a decreasing price until the foreigns are in in quantity.

Commissioner Prouty: Do you ship lemons during the entire season?

Mr. Woodford: Every month in the year, and I think every day in the year, you might say.

Commissioner Prouty: But in the greatest number, at what time of the year?

Mr. Woodford: The records that have been submitted show exactly that feature; but the shipments are heavier in April—well, in the next 90 days, April, May and June.

Commissioner Lane: What would be the difference in the selling price between New York and Chicago at the same time for a

50 box of lemons?

Mr. Woodford: That would depend on different seasons of the year.

Mr. Call: Take the average of the year.

Commissioner Lane: If you have the average.

Mr. Woodford: The average of the year, the price at Chicago would be, I should say, 25 or 30 cents a box better than at New York.

Commissioner Lane: 25 or 30 cents?

Mr. Woodford: I think so. I think that is shown in detail in some of our exhibits, or will be.

Commissioner Lane: You meet the Sicilian competition at Chicago as well as at New York?

Mr. Woodford: We meet it at Chicago and meet it clear up to the Mississippi River; very little west of the Mississippi River.

Commissioner Lane: Give me a figure, if you can, Mr. Woodford,

showing the price of lemons in Chicago in April, and then the price in New York at the same time, and the price at the Mississippi River at the same time, showing the difference between the price in the three fields.

Mr. Woodford: That would vary, greatly, at different seasons of the year.

51 Commissioner Lane: April, I said.

Mr. Woodford: I do not believe I could give you that, not from memory. I could get it for you.

Commissioner Lane: Your books show that, do they not?

Mr. Woodford: I could get it for you without much trouble.

Mr. Call: Excepting the time that you speak of in the fall of the year when the foreign crop is not being imported extensively, in the remainder of the year you say that the price graduates lower on a sliding scale from the west to the east, does it?

Mr. Woodford: I did not catch the first part of the question.

Mr. Call: I said excepting that brief period in the fall when the foreign lemons are not being imported in quantities, the price is a graduated price from the west to the east and from the south?

Mr. Woodford: That is true.

Mr. Call: There is a short period in the fall of the year when the foreign lemon is not coming in in sufficient quantities to supply the Seaboard markets, and during that time California has a chance to sell fruit there.

Mr. Woodford: Usually the first of our new crop marketed in October and November strikes an excellent market at New

52 York, on account of it being the shortest time for the foreign crop.

Mr. Call: And during the remainder of the year your highest prices are in your Rocky Mountain district, and between the Missouri River and the Rocky Mountains?

Mr. Woodford: During the remainder of the year and for the entire year, as an average the higher prices are west of the Mississippi River, and the next higher prices in the middle section, and the lowest on the Atlantic Coast.

Mr. Call: How do those differences in prices correspond to the westbound rate on foreigns?

Mr. Woodford: Generally speaking the increased price in western markets is about the same as the freight rate on foreign, the difference in the freight rate.

Mr. Call: That is taking the New York price as a base, the westbound freight from New York would determine the difference between New York and interior points?

Mr. Woodford: I think that general statement is true.

Mr. Call: Substantially?

Mr. Woodford: Substantially true.

Mr. Call: And from other ports, from New Orleans north, does the same rule prevail?

53 Mr. Woodford: Well, yes, from any importing point, although the great bulk of the lemons come through New York.

Commissioner Prouty: Do some of these statements show the total consumption of lemons in the United States?

Mr. Call: It shows by adding together our shipments and importations given by Mr. Powell, it shows the total consumption yearly for several years last past.

Commissioner Prouty: Those figures are given in so many dollars. Is there any difference in the quality of foreign lemons and California lemons?

Mr. Call: We give it in pounds as well as value here in this report. You might state the difference in quality, Mr. Woodford.

Mr. Woodford: A Californian thinks his lemons are the best and the foreigner thinks his lemons are the best.

Commissioner Prouty: I quite agree with you, but what does the man who pays for them think?

Mr. Woodford: If he is in the habit of buying foreign lemons, he appears to be satisfied, and if he is in the habit of buying California lemons he appears to be satisfied; I think it is a standoff on the whole year as an average in quality; there are times when ours are
54 better, I think, and other times they are not.

Mr. Call: There is a difference in the grade of oranges from any tree or any locality?

Mr. Woodford: Oranges or lemons?

Mr. Call: I would say lemons?

Mr. Woodford: There certainly is a difference in lemons.

Mr. Call: From the same tree, from every orchard and every locality there is a difference, is there not?

Mr. Woodford: Every section has all grades.

Mr. Call: So that every shipper ships some good, first class lemons, some second grades, and some third grades?

Mr. Woodford: Every grower and shipper, so far as I know, has some of every grade.

Mr. Call: And the same is true of the Sicilian?

Mr. Woodford: So far as I know, in the markets all grades are for sale.

Commission Prouty: What determines the grade of a lemon?

Mr. Woodford: Its appearance, its carrying quality, solidity, thinness of skin, and the amount of juice; one lemon may be of exceedingly fine texture and appearance and very full of juice and be twice as valuable as another lemon of the same size which is thick-skinned and hollow cored.

55 Commissioner Prouty: Do you pick those two lemons off the same tree?

Mr. Woodford: Off the same tree. They are picked according to size. When they get the proper size the lemon is picked regardless of whether it is yellow or green.

Mr. Call: State what the fact is with regard to the effect of obtaining markets, either by the Sicilians or by the Californians, and the ability of either to dislodge the other in a market when once established?

Mr. Woodford: It is hard for the Californian to dislodge the Sicilian in any market where the public is educated to using the

Sicilian lemons. It is a fight to dislodge them. They are prejudiced in favor of the Italian lemon, and this is largely due to the fact that in most cities the trade is in the hands of Italians, who are prejudiced in favor of their home product. I think it is more due to that than to the consumer. I think the consumer, perhaps, would be in favor of the American grown product, but the fruit trade is largely in the hands of Italians.

Commissioner Prouty: Is there any difference in the appearance of the two lemons?

Mr. Woodford: I do not think there is much difference, not grade for grade.

56 Commissioner Lane: This rate has been in six months or more; have you found difficutly in getting into your old markets?

Mr. Woodford: I do not understand what rate.

Mr. Call: The advanced rate on lemons to $1.15.

Mr. Durbrow: The rate has been enjoined.

Mr. Woodford: We have not been paying the $1.15 rate.

Commissioner Lane: How has that been suspended, do you pay it into Court, the balance?

Mr. Call: We pay it into the surety company, and the surety company give a bond to save the defendants.

Mr. Woodford: The change in rate has had no opportunity to develop in the market, because we are paying the old rate.

Commissioner Lane: So you are now figuring upon being able to stay put in your own market, and you have been figuring for the last six months upon being able to have continued access to those markets which you had before the rate went into effect?

Mr. Woodford: Yes, there is no change in the business.

Commissioner Lane: There has been no change in the situation at all——

Mr. Call: The rate went into effect December 6th to nearly all the points throughout the country, and there has not been

57 sufficient time to determine the effect, has there?

Mr. Woodford: Well, inasmuch as we are paying the old rate, I do not see how it affects the situation at all; there is no change as yet.

Commissioner Prouty: I think as a rule the carriers who are not subject to this injunction, continue to charge the old rate, the $1 rate, so that lemons move under the old rate; is not that so?

Mr. Norton: That is what I understand.

Commissioner Prouty: That lemons have moved as a rule under the old rate of $1.

Mr. Durbrow: I understand only the three initial lines are properly before the Circuit Court of the United States, and the eastern connections of the initial lines are obliged to collect and enforce the higher rate.

Commissioner Prouty: But in point of fact, they have not done it?

Mr. Woodford: No.

Mr. Call: And they have taken a different view of it.

Commissioner Lane: The theory of the Court was that the injunction went against the initial carriers, and they therefore suspended the rate entirely, was not that it?

58 Mr. Call: That was the theory, it being a joint rate which required the concurrence of all, it could not go into effect as to one without as to all.

Mr. Durbrow: I do not understand that precise point may be determined by the Circuit Court. That may be the expression of some of counsel, but under the Macon Grocery Company case, if for no other reason, I think we are pretty safe in holding that the initial lines are the only lines enjoined here. They joined the Trans-Continental Freight Bureau and made them a party defendant in that proceeding.

Commissioner Prouty: But the fact is the $1 rate has been charged, and the shipper has not yet been required to pay the $1.15 rate?

Mr. Durbrow: I am not advised what the eastern connections have done.

Mr. Woodford: Well, that is a fact, almost without exception.

Mr. Durbrow: If the complainants have paid these charges into the hands of the surety company, they have practically paid the rate.

Commissioner Prouty: I understand they gave a bond, and that they would be obliged to pay the additional sum if it were held that the advance were proper.

59 Mr. Halsted: But under their arrangement with the surety Company they paid the difference over to the surety company.

Commissioner Prouty: At the time of the shipment?

Mr. Durbrow: At the time of the shipment, so it is practically the same as if they had paid the rate into the hands of the carrier.

Commissioner Prouty: It does not produce any effect on the movement of the fruit, because the shipper is still paying the $1 rate. You can show what effect the higher rate would have on the markets, but he cannot answer that question, because his rate still remains the same.

Mr. Call: The buyer still pays the old rate and deducts it from the price, and we get the difference, so that so far as our trade relation is concerned, it is unchanged, but we may eventually lose the increase in rates; but it has not entered into the deal so far.

Mr. Durbrow: The complainants have great confidence in the outcome of the case, evidently?

Mr. Call: Well, I have not expressed it as fully as I feel it. How does the production of lemons at the present time compare with the consumption in the territory where the California product has a market?

60 Mr. Woodford: Do you mean California production?

Mr. Call: Yes, where the California production has the market.

Mr. Woodford: California produces twice as many lemons now as can be marketed west of the Mississippi River.

Mr. Call: And the territory between the Mississippi River and the Allegheny Mountains you call fighting ground, do you?

Mr. Woodford: There is a contest all the time between the Sicilian and the California lemon.

Mr. Call: That is where you are in sharp competition with the foreign lemon, is it?

Mr. Woodford: All the time.

Mr. Call: And the price at which you can sell in that territory, is that absolutely fixed by the New York price on the imported product, the New York auction price on the imported product, plus the freight rate in that territory?

Mr. Woodford: Approximately so; the New York auction price regulates the lemon market in this country.

Commissioner Prouty: Are these Sicilian lemons sold at auction in New York?

Mr. Woodford: They are virtually all sold at auction everywhere, at all points.

61 Commissioner Prouty: They come in boxes?

Mr. Woodford: They come in boxes.

Commissioner Prouty: About the same weight?

Mr. Woodford: They vary more than the California product.

Commissioner Prouty: How are they sold, by the pound or box?

Mr. Woodford: By the box.

Commissioner Prouty: Are they brought there in regular line steamships or tramps vessels?

Mr. Woodford: Special steamships, I think.

Commissioner Prouty: Designed to carry fruit?

Mr. Woodford: Yes, sir, with proper ventilation for fruit.

Commissioner Prouty: Are they brought there by some concern like the United Fruit Company?

Mr. Woodford: I think not; I am not posted on that point, but my impression is not.

Commissioner Lane: What would be the average difference at any time you may choose between the price of a box of California lemons and a box of Sicilian lemons in New York?

Mr. Woodford: I don't think I grasp the question.

Commissioner Lane: What is the difference in the price between a box of California lemons and a box of Sicilian lemons in New York?

62 Mr. Call: Side by side, on the same day.

Mr. Woodford: In the fall of the year the California lemon will bring the best price.

Commissioner Lane: Give it to me approximately in figures.

Mr. Woodford: Through the whole year, about the same.

Commissioner Lane: About the same?

Mr. Woodford: Yes, sir; there are times when the California lemon would be higher, and there are times when the Sicilian lemon is generally looked upon by the eastern trade as better in keeping quality, which makes it a higher price.

Commissioner Lane: Let us take it today; a box of lemons is brought from Sicily to New York and a box of lemons is brought

from California to New York; those two boxes are put at auction in New York for sale. How much will the box of Sicilian lemons produce and how much will the box of California lemons produce in price?

Mr. Woodford: We have not had California lemons in New York recently, but——

Commissioner Lane: How recently have you had them?

Mr. Woodford: Probably two months ago.

Commissioner Lane: That would be the forepart of this year?

Mr. Woodford: Yes, sir.

63 Commissioner Lane: Were there any Sicilian lemons in the market at the same time?

Mr. Woodford: They are always in the market.

Commissioner Lane: How much would the box of California lemons bring in New York at that time?

Mr. Woodford: The California lemons at that time of the year would outsell the Sicilian lemons.

Commissioner Lane: How much in dollars and cents?

Mr. Woodford: 25 cents a box on the average, I should say.

Commissioner Lane: How much would that be for the box of California lemons, $2.25?

Mr. Woodford: I cannot give you the market from memory, two months ago.

Commissioner Lane: Well, what would be the spread between the two, 25 cents?

Mr. Woodford: 25 cents difference at that time.

Commissioner Lane: 25 cents difference at that time?

Mr. Woodford: In favor of California at that time of the year.

Commissioner Lane: $2.25 as against $2.00, we will say?

Mr. Woodford: Yes, as an illustration. I was going to state that the sale of lemons in New York, the foreign sale of lemons,

64 just a day or two ago as compared with a single car which we had in Boston, our car brought about 25 cents more than the foreign sales averaged, but of course it is not an exact comparison, because our car might have been a higher quality than the average of the foreign cargo.

Commissioner Lane: Do I understand you that from approximately January until the fall of the year California lemons do not get into New York as against the Sicilian competition?

Mr. Woodford: Not in great quantities; occasionally they do, but not very often.

Commissioner Lane: Come westward and give me the first point where the California lemon is able to meet the Sicilian competition.

Mr. Woodford: Well, Chicago is about an even proposition with us, I should say.

Mr. Call: The first point, he said.

Mr. Woodford: Well, I think Chicago, the even competition would be about Chicago.

Mr. Call: That is not the question. The question is, where is the first point west of New York?

Mr. Woodford: Where we sell all the year round?

Commissioner Lane: Yes. In Cleveland?

65 Mr. Woodford: We sell in Cleveland and Buffalo and Columbus, Ohio, and Detroit, practically all the year round.

Commissioner Lane: And Pittsburgh?

Mr. Woodford: Pittsburgh not so much.

Commissioner Lane: The rate is 30 cents from New York to Cleveland?

Mr. Woodford: The record shows; I would rather give it exact.

Commissioner Lane: I think that is it, 36 cents from New York and 30 cents from Montreal.

Mr. Woodford: Yes, sir, that is correct.

Commissioner Lane: And that is about as far east as you can get the year round, is it?

Mr. Woodford: That is about as far east as we can get, and in the time of greatest consumption we do not even get to Cleveland with as great a quantity proportionately as we do in the fall of the year when we are going to New York.

Commissioner Lane: At the time you are meeting the Sicilian lemon in Cleveland, or the time of greatest consumption, let us say, which I understand from you to be along in the spring or early summer, what would be the difference between a box of California lemons in Cleveland, Ohio, and a box of Sicilian lemons in New York? I want to get at the disadvantage you are under

66 by reason of your freight rate.

Mr. Woodford: A box of California lemons would be worth 25 cents more.

Mr. Durbrow: 25 cents a box?

Mr. Woodford: Yes, a box of California lemons would be worth 25 cents more in Cleveland than in New York, but that would not be altogether a fair comparison because New York is a foreign lemon market, and Cleveland is getting to be more and more a California market; that is, we are getting a greater proportion in there, and that would help the situation some in Cleveland.

Commissioner Prouty: Do you sell two-thirds of the lemons that are sold in Cleveland?

Mr. Woodford: No, sir, the advantage is with the foreign product; I do not think we sell one-third of the lemons that are sold in Cleveland, not over that.

Commissioner Prouty: Do you sell half of the lemons sold in Chicago?

Mr. Woodford: I think we do; perhaps more than that in a year with a large crop with us.

Mr. Call: How does the value or selling price of a California lemon in New York compare with the value or selling price of the Sicilian lemon in New York during the remainder of the year?

67 Mr. Woodford: In the spring and summer on the average the foreign lemons will bring more in New York than the California.

Mr. Call: Take it the year round average in those eastern markets, the year around average on the same grade of lemons, can you say

that either has the advantage in price, and if so, which one has the advantage?

Mr. Woodford: I think the Sicilian would have the advantage on the Atlantic Coast, because the dealers are prejudiced in its favor in most markets; it would not apply to all markets alike, and farther west in Cleveland and Detroit and Columbus, it would be a standoff, and in Chicago probably California would have the preference.

Mr. Call: There is some difference in those markets in the average you receive, owing to the character of the lemons that the market demands?

Mr. Woodford: Certain markets take a higher grade of lemons, and are very particular about getting a certain size, and in those markets we would naturally obtain a higher price.

Mr. Call: Well, is there any particular market you have in mind in that middle-east country that takes the higher grade?

Mr. Woodford: Buffalo and Columbus and Detroit gen-
68 erally take a pretty high class lemon.

Mr. Call: They get the highest grade lemon that California sends east?

Mr. Woodford: And Buffalo in particular.

Mr. Call: And Buffalo in particular takes the highest class lemons?

Mr. Woodford: Yes, sir.

Mr. Call: And therefore the average at Buffalo is a little higher than it is in other adjacent cities in the east?

Mr. Woodford: Yes, sir.

Mr. Call: And is there any city in the middle west that takes our lowest grade lemons where the price would be abnormally low?

Mr. Woodford: Cincinnati and St. Louis take a low grade and an off size lemon, small, inferior stuff.

Mr. Call: So that the prices at those points would be below the average that you are speaking of?

Mr. Woodford: Yes, they would be very low relatively.

Mr. Call: And Buffalo would be above?

Mr. Woodford: Buffalo would be higher.

Mr. Call: But otherwise the gradation from west to east and from west to south is pretty nearly uniform, as you have before
69 described?

Mr. Woodford: Well, there is some variation, but the points mentioned are the extremes.

Mr. Call: Now, you say that only half of the California crop can be marketed in the territory where the price is not controlled by the foreigner; is that correct?

Mr. Woodford: That is correct.

Mr. Call: The remaining half of the California crop must go into competing territory against the foreigner; is that correct?

Mr. Woodford: That is true.

Mr. Call: And two-thirds of that remaining half go into what you may consider fighting territory, is that it?

Mr. Woodford: Between the Mississippi River and the Alleghenies.

Mr. Call: Where it is an every day fight between the two parties; is that right?

Mr. Woodford: That is true.

Mr. Call: And the remainder of the California excess crop goes into a loss in the territory in the east?

Mr. Woodford: On an average it goes into a loss in the east; in the fall that would not be the case.

70 Mr. Call: This increase in the rate of 15 cents, what does that mean, as to your territory, that you can market the California lemon?

Mr. Woodford: I don't know as I understand the question.

Mr. Call: Would it have any effect as to decreasing the territory of your market, decreasing your market?

Mr. Woodford: The 15 cent advance in rate in my opinion would mean that much less price for our lemons that are sold in the competitive territory, everything east of the Mississippi River.

Mr. Call: And would it increase by that extent the excess which would be forced into the territory of the foreigns?

Mr. Woodford: As the production increases the excess, of course, has got to go mostly east in competition with the foreign lemons.

Mr. Call: But would the increase in freight rate increase that excess which must go into the territory controlled by the foreign lemon?

Mr. Woodford: I do not see how it would increase the quantity of lemons going into that territory. I think we would sell the same amount of lemons in the territory west of the Mississippi. The

71 balance of the crop would have to go east of the Mississippi.

Commissioner Prouty: Suppose you could reduce your price 15 cents a box on lemons sold in territory west of the Mississippi River, how much would that increase the consumption?

Mr. Woodford: I do not think it would increase it much; lemons are not like oranges; the people use about so many lemons, and it is pretty hard to increase the consumption by reducing the price. The use of the lemon is different.

Commissioner Lane: Why should you be under a 15 cent disadvantage by reason of this rate when the tariff has increased on the Sicilian lemon? There is an offset there to some extent, is there not?

Mr. Woodford: We expect to get that tariff in order to enter that market. We have been unable under existing conditions to enter the Atlantic Coast market at a profit; it has been at a loss. Our surplus has gone there at a loss, and with the orchards which are set and the rapid increase in the production of lemons, we have to look to that market, and we hope with the increased duty to be able to market this increased crop in the far east at a profit.

Commissioner Lane: How much was that increase in the duty?

Mr. Woodford: Half a cent a pound.

Commissioner Lane: Half a cent a found, or——

72 Mr. Woodford: About 35 cents a box.

Commissioner Lane: About 35 cents a box increase?

Mr. Woodford: Increase.

Commissioner Lane: What was it before?

Mr. Woodford: It was one cent a pound or about 70 cents a box.

Commissioner Lane: So that you have $1.05 a box protection?

Mr. Woodford: $1.05, if the weight of the fruit is 70 pounds; that is about the average that the importers have paid.

Commissioner Lane: Your estimated weight is 84 pounds to the box?

Mr. Woodford: Well, they have had credits, the importers have, for rot and decay.

Mr. Call: They do not pay on the weight of the box, either?

Mr. Woodford: They do not pay on the weight of the box. It is on the net fruit.

Mr. Durbrow: But they pay 30 per cent ad valorem for the box itself?

Mr. Woodford: If it is Maine manufacture, which amounts to a cent or two.

Mr. Durbrow: Do they ever get any from the Maine mills?

Mr. Woodford: I don't think they get the quantity that they used to; they come from Austria now.

73 Mr. Durbrow: And they pay 30 per cent ad valorem on the box itself, in addition to the duty on the fruit.

Mr. Woodford: The box is worth about 14 cents, I suppose.

Commissioner Lane: When did that duty go into effect?

Mr. Woodford: August 5th last.

Commissioner Prouty: What effect has that produced up to the present time?

Mr. Woodford: I think it has kept both Sicilians and Californians guessing, to use that expression, as to what was going to happen; the markets have been uncertain.

Commissioner Lane: Have you been able to extend your market any further east on that acount?

Mr. Woodford: We have not had the fruit to do it; our crop and the Sicilian crop have both been delayed in ripening and maturing on account of dry weather. We had no rain in California from January 1st until now, and very little now, and the Sicilian crop was delayed by dry weather in the fall, with the result that the supply has been less from both countries, both producing sections, than usual at this time of the year, so there has been no opportunity to try out that proposition.

Commissioner Prouty: How much have you received for your lemons so far?

74 Mr. Woodford: We have received excellent prices this fall.

Commissioner Prouty: About how much?

Mr. Woodford: Well, I should say that our lemon prices have been from 25 cents to $1 a box higher than usual during the last three months, due largely to the fact that the supply has been less, a great deal less. California has shipped 300 cars less lemons since the first of November than a year ago, and the Sicilians have sent over 100 cars less up to date, so there is a shortage of 400 cars in the markets, due to the non-maturing of the crop; and the consumption has been exceedingly heavy, due to the extreme cold

weather that has prevailed throughout the east. There are two seasons for a great consumption of lemons, very cold and very hot weather. Very cold weather brings Grippe and colds, and people use lemons. And in very hot weather they use them in soft drinks. So the consumption has been greater than usual and the supply less, and the price higher, and we have not had a chance to try out the tariff yet.

Mr. Call: Has it had any effect on the class of fruit or grade of fruit that is being imported?

Mr. Woodford: All reports on the foreign lemon that have come in since the tariff are that it never has been of such high
75 quality; they have cut out the lower grades; it comes from every section.

Mr. Call: Were you, as representing the growing industry of California, down before Congress in the House and Senate when this matter of the tariff was being considered?

Mr. Woodford: I was.

Mr. Call: And were computations made there before Congress and figures furnished as to the cost of production, and comparative cost of production between the two countries, used as the basis for fixing the tariff duty?

Mr. Woodford: That was the principal feature.

Mr. Call: At that time was there evidence furnished Congress as to the comparative cost of labor between Sicily and the United States?

Mr. Woodford: A brief was filed, showing the difference.

Mr. Call: In that connection, while we are on that subject, I would like to offer from the Congressional Record this question and answer, while Senator Flint was presenting the matter in behalf of California before the Senate during the debate on this schedule——

Mr. Durbrow: If your Honors please, just a moment. I would object to the introduction of that evidence in that form, un-
76 less we have introduced at this time the entire record upon which Senator Flint made his recommendations and made his arguments. I think if we are going to have any of this record introduced, the entire record should be before your Honors; and we have here in convenient form the entire record of the proceedings had before Congress, before the Committees of the different Houses, when this question of the increase in the lemon rate was being agitated. Included in that is a brief prepared by Mr. Call, or some of his associates, and we would like to have that entire record introduced in evidence, and then there is no objection to Mr. Call reading any particular part of it, but we would like to have the entire matter before you, and not excerpts read from place to place.

Mr. Norton: I would like to make this suggestion, if I may——.

Commissioner Prouty: We do not think that the record is very material to this case, but if any part of it is to be introduced, it must all be introduced.

Mr. Norton: I was going to object to any part of it being introduced for the reason that it encumbers the record with irrelevant matter, and this witness can give any information of this sort that is desired.

Commissioner Prouty: There is this objection to introducing this record: It sometimes happens that the testimony taken
77 before the Commission is printed during proceedings in Court, and it makes an extremely voluminous and cumbersome record. We do not like to receive a document of this kind unless it is necessary, but if you desire to, you may introduce it.

Mr. Norton: I should like to object to it for the reason your Honor is stating, and for the additional reason that the question propounded to the witness I think he, as an expert, is capable of answering, and it makes a cleaner and more desirable record, and brings it down to date.

Commissioner Prouty: It seems to us you should bring out from the witness whatever you desire to, if he has knowledge of it. He was there and participated in this matter.

Mr. Durbrow: I do not wish to be understood as asking to have this record introduced, but if part of it is going in, I want it all to go in. I would object to this evidence going in itself.

Commissioner Prouty: What was the question you proposed?

Mr. Call: I do not see anything particularly in the record to object to, or any reason to encumber this record so much. The question I had in mind was the interrogation of Senator Flint while he was on the floor advocating this tariff, as to whether it was not possible for the railroads to absorb some of the increased duty, if it should be granted by Congress, and his reply that the mat-
78 ter had been settled by a former hearing, and that there was no opportunity for an increase in rate. That is all I care to offer, and it was just simply with a view of showing the feeling of Congress, that the additional duty was given to the producers, and not to the railroads.

Mr. Norton: What common carrier was he representing when he was asked that question?

Mr. Call: I don't know that he was then representing any common carrier; you perhaps would know better than I; but he had been representing the Southern Pacific Railroad in this former contest, and was the attorney of record in the former hearing, and he was then the Senator representing California and the whole United States.

Commissioner Lane: He based his argument to some extent on the old report of the Commission. I know he sent to us and got all the data we had showing the high price of land and other reasons why your industry should be protected as against Sicily.

Mr. Call: He was advocating primarily the position of California, and of course was legislating in behalf of the whole United States, and was not representing any carrier for any purpose, but was there to give consideration to the proposition as to who was entitled to this protection, whether the railroads or the
79 people, and was there assuring his colleagues in the United States that he asked for this for the benefit of the people of California, and this producing industry, and not for the benefit of any carrier.

Commissioner Lane: I do not think the record will indicate or

bear out in the slightest degree the suggestion that he answered in behalf of any carrier or was representing anybody except the interests in this particular part of the state.

Mr. Norton: I understood from the statement of counsel that he said it was understood there would be no increase in the rate.

Commissioner Lane: He said that matter had been settled, as I recall, and he assumed, I suppose, as the Commission sometimes assumes, that when a rate is fixed, it is fixed. That probably was the basis for his answer.

Mr. Norton: We had never fixed a $1 rate on lemons. He could make no such assumption for us, as will appear when our case goes in.

Mr. Joseph H. Call: I think the settled rule in court is that the Court will hear such evidence; the debates in Congress were material to show the intent of Congress in enacting a certain statute, and that intent may be disclosed by the debate in Congress, but
80 not the testimony upon which Congress acted. I think that is the general rule.

Commissioner Prouty: There is no claim here yet on the part of the defendants that Congress increased this duty for their benefit.

Mr. Asa F. Call: I have before me the answer of one of these defendants in which they say this:

"This defendant says that the imposition by the United States of the higher tariff on foreign lemons was not for the sole benefit of said California producers, but was in part for the benefit of the common carriers which have heretofore established lower transportation rates in order to enable the California growers to reach remote markets and compete therein, and that the increase in rates complained of represents but a reasonable proportion of the increase in price at which the California growers are enabled, by the increased tariff, to compete successfully in such remote markets with such foreign products, and that it is but fair, just and reasonable that the common carrier should participate to the extent of which the complainants complain, in the benefits accruing from such increased tariff."

Commissioner Prouty: Who raises that point?

81 Mr. Call: The Chicago Great Western, I believe.

Mr. Durbrow: I do not appear for that line, your Honor.

Mr. Call: As I understand, the Commission permits me to read that question and answer into the record?

Commissioner Prouty: I hardly think that is worth while at the present time. If it should become pertinent in the subsequent history of the case, then you might refer to it again.

Mr. Call: I would ask you as to the condition of the lemon marketing proposition in what is known as the southeast territory as compared with other parts of the country?

Mr. Woodford: It is very hard to enter that territory on account of an arbitrary rate of about 25 cents per hundred pounds from Memphis on, from the gateway on.

Commissioner Prouty: You refer to territory east of the Missouri River and south of the Ohio River?

Mr. Woodford: And south of the Ohio.

Commissioner Prouty: In that territory the local is added to this through blanket rate?

Mr. Woodford: Yes, the local of about 25 cents is added to whatever the blanket rate is.

Mr. Call: And in that territory they have a comparatively low rate on foreigns from New Orleans and other ports?

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Mr. Woodford: Lower rates relatively and in small quantities.

Mr. Call: They have a little advantage in the rate, and you have a little disadvantage in the rate to that territory, as I understand it?

Mr. Woodford: That is the situation.

Mr. Call: And that keeps you out of that territory?

Mr. Woodford: We sell very little in that territory; it is a large consuming territory also all the year round on account of being south and in a warm country; the consumption of lemons is very great down there.

Commissioner Prouty: Do you sell in Texas?

Mr. Woodford: We sell in Texas, the western Texas markets are largely supplied from California; the eastern and southern Texas markets not so much; at Houston, for instance, we sell very few lemons, practically none, while in Fort Worth we sell pretty nearly all of them.

Mr. Call: What is the character of the lemon usually demanded by the trade in the southeast?

Mr. Woodford: They demand a small lemon, small in size.

Mr. Call: And what as to grade?

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Mr. Woodford: They want a pretty good grade lemon.

Mr. Call: And in that market the boxes or crates having the larger count are preferred, are they?

Mr. Woodford: Smaller lemons are preferred, 360s, 420s and 490s to the box.

Mr. Call: The foreign pack corresponds closely with our pack as to the number brought in in a box?

Mr. Woodford: Very closely. Our box and pack is based on the foreign box and pack; they are pioneers in the box and pack.

Mr. Call: And what about the Canadian markets, what is the condition of the competition in those markets?

Mr. Woodford: We practically do no business in Canada in lemons.

Mr. Call: The Canadian duty has been removed, has it not?

Mr. Woodford: Canada has no duty on citrus fruits.

Mr. Call: It formerly did have?

Mr. Woodford: Both our own and foreign can come in free; they formerly did have 25 cents a box, I think, as far as we were concerned.

Mr. Call: And how about that country in around Winnipeg?

Mr. Woodford: May I make a correction? When I was asked about Canada, I meant eastern Canada. We do a large amount of lemon business in Victoria and Vancouver and

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British Columbia and Winnipeg; but eastern Canada we do practically none, Toronto and Montreal, and that section.

Commissioner Lane: How are you able to get into Winnipeg with your lemons as against Sicilian lemons coming in through Montreal?

Mr. Woodford: We go in largely in mixed cars with oranges; the fruit goes in; the trade is small, and 75 or 100 or 150 boxes of lemons in a carload of oranges, at the orange rate.

Mr. Call: There is no one there who can take a carload and get a carload rate?

Mr. Woodford: They are gradually developing the carload business, but we have worked in there on the less than carload lots of lemons mixed in with a carload of oranges.

Commissioner Lane: What is the rate from Montreal to Winnipeg? $1.16, is it not, from New York to Winnipeg, and no rate quoted from Montreal as against $1.25 from California?

Mr. Woodford: We are pretty nearly on even terms up there so far as the rate is concerned.

Commissioner Lane: And their lemons come in free?

Mr. Woodford: Their lemons come in free, but they apparently come in from New York instead of from Montreal; but they would be free anyway.

Mr. Call: They come through this country in bond, do they not?

Mr. Woodford: Yes.

Mr. Call: And at certain seasons of the year, how far west do the Sicilians move?

Mr. Woodford: Not very often do they come west of the Mississippi River now, although there are sometimes in the height of the season, and even last year, the year of our largest crop, when foreign lemons were sold in Oklahoma, Kansas City, Topeka, Kansas, and Iowa points, and a great many up around Minneapolis.

Mr. Call: Are there any other foreigns coming into this country in appreciable quantities excepting from Sicily?

Mr. Woodford: The importations of lemons are almost wholly from Sicily and Italy. They are really the only two producing countries in the world of lemons, Sicily and southern Italy and California. Florida produces a few for their own use only, I think; they very seldom ship any outside of the state.

Mr. Call: What is the comparative quantity produced in each of these countries?

Mr. Woodford: Do you mean between Sicily and the United States?

Mr. Call: I do not mean in regard to the amount of importations, but the amount produced.

Mr. Woodford: The production in Sicily, according to information from our Consul is about 69,000 carloads a year, or was in 1908, I think; and our production in that year was about 5,000 carloads.

Mr. Call: That is the last record you have, for 1908?

Mr. Woodford: Yes. We have not last year's record.

Mr. Call: And of that amount about ten per cent came over to this country, about 7000 cars?

Mr. Woodford: About 7000 carloads came to this country in that year.

Mr. Call: And the consumption in this country was about as 5 to 7?

Mr. Woodford: Five from California and seven from Sicily.

Mr. Call: And that percentage of Californians furnished that year, was that a slight increase over the later years, or has that percentage been substantially the same?

Mr. Woodford: It was somewhat of an increase the last two years have been the heaviest lemon crops from California; the
87 season of 1908-9, as we term it, or 1907-8, as we term it, mostly the year 1908, California produced about 5000 cars, and last season, 1908-9, about 6200 cars. The record shows, or the statement shows.

Mr. Call: What is the estimate on the present California crop for this year?

Mr. Woodford: This year's crop is lighter, I think; 5000 cars, or probably less. Last year was an unusually heavy crop and great production everywhere, abnormal.

Mr. Call: About 20 per cent lighter than last year?

Mr. Woodford: Lighter than last year.

Commissioner Lane: Have you any figures showing the amount of new lemon orchards that have been planted in the last five years?

Mr. Call: I think we will be able to furnish that with substantial accuracy from the reports, but not by Mr. Woodford. We have had that investigated by one of our growers, and I think we can give it with something like approximate accuracy.

—. What was the condition of the lemon industry at the time this lemon rate was reduced from $1.25 to $1?

Mr. Woodford: Lemon trees were being budded over in large blocks to oranges at that time, because many of the growers
88 had given up the idea of being able to produce lemons.

Commissioner Prouty: What was the price then?

Mr. Woodford: Well, the price was relatively low, I think $1.25 or $1.50 a box f. o. b. average, something like that.

Mr. Call: Do you know about the number of groves that were either dug up or budded over during the period just preceding this decrease in the rate?

Mr. Woodford: Several thousand acres, 5000 or 6000, I should say.

Mr. Call: And what had been the decrease in production in boxes, do you know?

Mr. Woodford: I do not think there was any great decrease in production because there were new orchards coming along all the time that never had borne,—coming into bearing to take the place of the trees that were dug up.

Mr. Call: There has been some reduction, has there not, from 1901 to 1903?

Mr. Woodford: The record shows 2900 cars of lemons in 1901,

2800 in the next season and 2600 in the next, and 2700 in the next; not much variation.

Mr. Call: At that time was the matter of the condition of the industry under discussion between the growers and the carriers?

Mr. Woodford: It was.

89 Mr. Call: And was the question of the effect of the rate on the condition of the industry also discussed?

Mr. Woodford: In this way, the statement was made to the carriers, and they were cognizant of the fact, I think, themselves, that the orange acreage was being increased by this budding over and the lemon acreage decreased, and that they would be into trouble on the orange proposition as well as on the lemon, if something was not done to stop it.

Mr. Durbrow: What do you mean by that, that they would be in trouble on the orange proposition? They thought there would be an over production?

Mr. Woodford: That the acreage of oranges was being increased correspondingly, that is, unnaturally increased correspondingly as the lemon acreage was being decreased.

Mr. Call: What was the result of that negotiation and discussion with regard to the rate?

Mr. Woodford: A reduction from $1.25 per hundred pounds to $1; that is, the $1 rate which had been granted in the winter season as a winter relief rate was made an all the year round rate; that was the term that the change was designated by, "An all year round rate."

90 Mr. Call: Since that time in 1904 has there been any notification to the growers or shippers, so far as you know, that it was of a temporary character, or what might be named as an emergency rate?

Mr. Woodford: We have had quite a little talk with the representatives of the carriers on the orange rate being of a temporary nature, that is, an emergency rate, $1.15 instead of $1.25, and had notification in writing from President Ripley of the Santa Fe that it was a mistake to reduce the rate from $1.25 to $1.15, and that they were going to raise it.

Commissioner Prouty: When was that notification made?

Mr. Call: Haven't you a letter with you?

Mr. Woodford: The orange rate went into effect on February 26th, 1907, and President Ripley wrote such a letter in the June following, June of the same year, but we never had any such notice as to any lemon rate. We considered the lemon rate as permanent as any other rate, although the representatives of the carriers have always talked to us about raising every rate. There are three ways to raise a rate as we view it: One by increasing the minimum weight, which does not raise the rate to the producer or consumer, but does increase the revenue of the carrier, and the second method

91 is by increasing the estimated weight of the box at which the fruit is taken, and the third would be a straight raise in rates.

We have had discussions with the representatives of the carriers at various times in these last years on all three of these sub-

jects, but the first method as to the minimum has ceased to be a subject of controversy because we have agreed among ourselves, the shippers and carriers, that we will load as long a car as they will furnish, six boxes wide and two high, let the minimum be whatever it will, which gives us proper ventilation, and that old controversy as to minimums is not a live one now. But the question of estimating weights and increase in the rate itself is still with us and has been with us all the while.

Commissioner Prouty: You say the estimated weight of lemons is 84 pounds to the box?

Mr. Woodford: Yes.

Commissioner Prouty: What does a box of lemons actually weigh?

Mr. Woodford: I think it will weigh several pounds more than that.

Commissioner Prouty: Your estimated weight of a box of oranges is how much?

Mr. Woodford: 72 pounds.

Commissioner Prouty: And that box will actually weigh how much?

92 Mr. Woodford: It will weigh probably 76 or 78 pounds on the average. It was testified to that effect in the former hearing by Mr. Earle and several others.

Mr. Call: As I understand you, the first temporary reductions were denominated as emergency or winter relief rates.

Mr. Woodford: Carried in the tariff so, winter relief rate.

Mr. Call: But in 1904, when the all-the-year-round rate went into effect, there was no such notation?

Mr. Woodford: Not to my knowledge. I think the tariff simply stated the rate, without any qualification, when it became an all-the-year-round rate.

Mr. Call: What was the apparent result upon the industry of this decrease in the rate from $1.25 to $1.

Mr. Woodford: The growers ceased to rebud their lemon trees to oranges, and began to set orchards in a small way, and later, when they could get the trees, in quit a large way; the first year or two they could not get the trees, and were uncertain about what the effect would be.

Mr. Call: It resulted in a very considerable expansion of the business, did it not, both in the way of setting and pro-

93 duction?

Mr. Woodford: The growers took better care of the existing orchards and set out new orchards, and the output has been about double in the two years.

Mr. Call: And what with regard to the growth of the orange business? Do you think the expansion of the lemon industry kept pace with the expansion of the orange industry from that time?

Mr. Woodford: I think it has.

Mr. Call: You think the growth of the two industries has been the same in percentage?

Mr. Woodford: In so far as new settings are concerned, I think that is true.

Mr. Call: That is, they have kept in about the same proportion?

Mr. Woodford: I think that is true.

Mr. Call: Have there been any additional facilities afforded to the importers that you know of recently, in the matter of rates, that is especially with regard to what is known as the import rate being cancelled and a commodity rate granted?

Mr. Woodford: The rates on foreign lemons to some points have been reduced from New York west.

94 Commissioner Prouty: Well, how much?

Mr. Woodford: Well, the records will show, but a few cents per hundred pounds, I think; in some instances as much as 10 or 12 cents; I cannot give it from memory.

Mr. Call: And that we can furnish by the tariffs, I think, of some lines, perhaps not on all lines, but especially the New York Central Lines, I believe there has been quite a reduction to our competing territory.

Commissioner Prouty: They have maintained in the past both a domestic and import rate, but has the import rate in the past been higher than the present rate?

Mr. Woodford: As I understand it, there is a reduction in the amount that the shippers would have to pay under the new rate.

Commissioner Prouty: They have cancelled the import rate——

Mr. Call: They have cancelled the import rate which required, as we understand it, a continuous passage, and that they have now restored a commodity rate from New York to these interior points on the same basis, which enables them to hold lemons there in any quantity at New York, waiting a chance to jump into our markets.

Mr. Durbrow: That was a higher rate, as I understand it.

95 Commissioner Prouty: My recollection is that the old import rate was 37½ cents and the new rate is 40 cents, but of course you are correct in saying that the lemons can be held in New York any length of time now. I do not know what the old practice was.

Mr. Matthews: The minimum has also been changed from 24,000 pounds to 20,000 pounds.

Mr. Call: At the time this matter was under discussion as to the necessity for a decrease in the existing rate of $1.25 to $1, was there any representation made, or any figures produced indicating that there might be in the future a reduction in the cost of producing California lemons?

Mr. Woodford: Not that I know of.

Mr. Call: Was there any suggestion there by either party or by anyone that the industry could at some future time stand an increase better than it could then?

Mr. Woodford: Not that I know of.

Mr. Call: Was there any announcement made by any railroad official to you that there was any intention to make a temporary decrease in the all-the-year-round rate to induce the planting of groves, with the idea of advancing the rate after they got them planted?

96 Mr. Woodford: Not that I know of.

Mr. Call: So far as you know there was no announcement made to any of the growers or producers of lemons at that time that there was any intention on the part of the carriers at some future time to increase the rates, any more than there is a general disposition on the part of the carriers to increase every rate that they have in the tariff sheets?

Mr. Woodford: The result of the $1 lemon rate was that so far as we looked at it, that is was as stable as any rate. It was liable to change, but so was any other rate.

Mr. Call: You mean that it was liable to change according to the wish of the carriers?

Mr. Woodford: Well, I think——

Mr. Call: Or the changing conditions?

Mr. Woodford: Well, I think that a letter that Mr. Chambers wrote to the Arlington Heights Fruit Company, to Mr. Frazier, of the Arlington Heights Fruit Company, which I have seen, on an inquiry by Mr. Frazier as to the permanency of their rate, stated that changed conditions might cause a change in the rate, and that is about——

Mr. Call: That was with a view of inquiring whether they might with safety set out groves, was it?

97 Mr. Woodford: Might set out groves and really, as I remember it, the tenor of the letter was that they could depend upon being treated fairly, but changed conditions might change the rate; but that same feature attaches to any rate.

Mr. Call: And nothing in view at that time?

Mr. Woodford: It attaches to the average rate, too.

Mr. Call: Mr. Chambers is General Freight Agent of the Santa Fe?

Mr. Woodford: I think he is General Freight Agent of the Santa Fe, or perhaps a higher position.

Mr. Call: He suggested it might be a good idea to go ahead and plant the groves, did he?

Mr. Woodford: I don't think so. I don't remember any suggestion to that effect.

Mr. Call: He said he thought you might plant the groves with safety and depend on the Santa Fe——

Commissioner Prouty: If much importance attaches to this letter, we had better have a copy of it.

Mr. Call: We will produce a copy. I had not thought of bringing it out, but as long as it was brought out, I thought I would see what there was to it.

Commissioner Prouty: Are you substantially through?

98 Mr. Call: I think at the present time that is all I care to examine Mr. Woodford on.

Commissioner Prouty: We will suspend here until two o'clock.

(Whereupon, at 12:30 o'clock p. m., a recess was taken until two o'clock p. m.)

99 After Recess.

Commissioner Prouty: Are you through, Mr. Call?

Mr. Call: I have a few questions I want to ask Mr. Woodford in regard to the status of the orange industry, which I overlooked this morning.

Commissioner Prouty: You may proceed.

Mr. Call: Mr. Woodford, what are the factors which determine the orange market from time to time and from year to year as near as you are able to judge from your experience in handling the product?

Mr. Woodford: Supply and demand.

Mr. Call: And is there any particular competition in determining that price?

Mr. Woodford: California competition. The competition that California has lies with Florida, Louisiana, Porto Rico and some scattering shipments from elsewhere. Louisiana has come quite into prominence; it shipped nearly a thousand cars this last June.

Mr. Call: What proportion of the orange consumption of the United States does California furnish?

Mr. Woodford: The total consumption is about twenty
100 million boxes, or was last year, and California furnished about twelve and a half million, I think.

Mr. Call: What proportion does Florida furnish?

Mr. Woodford: About five million boxes or thereabouts.

Mr. Call: To what extent does Florida competition affect the price of California oranges?

Mr. Woodford: The competition is very serious from Florida on the early shipments of the year from California; in November and December and even today there are about ten thousand boxes of Floridas arriving in New York daily.

Mr. Call: Has the period of competition with Florida oranges been extended in recent years as their production increased?

Mr. Woodford: As their production increases the competition is extended later in our shipping season.

Mr. Call: In former years at what time of the year did they have their crop disposed of?

Mr. Woodford: Generally about the first of February, that is, several years ago.

Mr. Call: And this year you say it is not yet disposed of?

Mr. Woodford: They are in the market in considerable quantities yet.

Mr. Call: So that the period now extends until about the first of April.

101 Mr. Woodford: I think they will be virtually out of the way by the first of April except in small lots.

Mr. Call: What advantage does California have over the Florida orange in price, if any? To what extent does the consumer prefer the California orange?

Mr. Woodford: I think that when the Florida orange is in its prime a great many consumers prefer the Florida orange, and when

the California orange is in its prime the same consumers might prefer the California orange. It depends upon the condition of the fruit. The Florida fruit matures earlier and has the advantage to a certain extent in the first part of the season and until the California oranges become sweet and in demand in most markets. It does not apply alike in all markets.

Mr. Call: Do you know the average market price of all the oranges handled through the Exchange last year?

Mr. Woodford: During the year ending August 31st, the oranges——

Mr. Call: 1909?

Mr. Woodford: Last season, the oranges sold by the Exchange averaged $1.52 f. o. b. the cars, per box.

Mr. Call: F. o. b. California?

Mr. Woodford: F. o. b. the car, California, $1.52 per box.

102 Mr. Call: Does that exclude the selling cost or include the selling cost?

Mr. Woodford: That is the amount of money received, from which the selling cost must be deducted.

Mr. Call: You deduct the selling cost out of that amount?

Mr. Woodford: All costs; that is, the gross amount per box in California. I might say that the summer oranges, Valencia lates sell relatively higher than the main crop of naval oranges, but all are included in the price.

Mr. Call: From that price of $1.52 what items would be deducted before the net would reach the grower?

Mr. Woodford: About 7 cents per box for selling, so far as the Exchange is concerned; more by some other shippers.

Commissioner Prouty: How much a box?

Mr. Woodford: About 7 cents per box for selling and about 30 cents per box for packing and about 8 cents per box for picking, if you want to go back to the orchard. That would mean about 45 cents to put the orange back on the tree.

Mr. Call: That would leave the grower last year about $1.07 for his fruit?

Mr. Woodford: That is the way it would figure on that statement.

103 Commissioner Prouty: That is $1.07 for the fruit on the tree.

Mr. Woodford: On the tree?

Mr. Call: How much bigger was the orange crop last year than the year before in California?

Mr. Woodford: About 25 per cent increase.

Mr. Call: And what reduction in price did they make in order to market the crop?

Mr. Woodford: The prices received last year were 20 cents per box less than the year before, so far as our shipments were concerned; $1.52 last year and $1.72 the year before.

Mr. Call: Is it a fact that in marketing the larger crops the price must be reduced?

Mr. Woodford: It has always so proved, almost without exception, that the greater the quantity to sell the lower the price.

Commissioner Prouty: Let me ask you the same question with reference to oranges that I did with reference to lemons. Suppose you were to reduce your price 20 cents below $1.52, how much in your judgment would that add to the quantity of oranges you could market?

Mr. Woodford: I think that would add one-third.

104 Commissioner Prouty: A reduction of 20 cents below $1.52 per box would add a third?

Mr. Woodford: I think so. Last year with 20 cents reduction we added one-quarter, under conditions practically the same.

Commissioner Prouty: Under the same conditions how much would that reduce the price to the consumer? About how many oranges are there in a box?

Mr. Woodford: About an average of 130 to 140, a little over ten dozen, about eleven dozen.

Commissioner Prouty: So that 20 cents a box would reduce the price about 2 cents a dozen?

Mr. Woodford: Yes.

Commissioner Prouty: Just how does a reduction of 2 cents a dozen in the price of oranges increase the market? Does it do it by inducing the retailers to make a less profit or do you sell them through a different class of people or——

Mr. Woodford: I think that the expenses except the freight and packing charges are reduced as the quantity increases; that is, the distribution expense principally; the greater business the jobber and retailer does, the less profit. When we have reasonable prices lower than the average on oranges special sales are put in by de-

105 partment stores and various new avenues of distribution at variable prices. For instance, I know of one large department store a year ago that put through several cars periodically at about 21 cents a dozen to the consumer, which is considerably under the price generally charged.

Commissioner Prouty: So you think that the retailer would probably make less money?

Mr. Woodford: The larger the volume of business the less the distributors at the other end of the line charge. They make the same profit by charging less per box or per dozen, because they have a very much larger volume of business.

Commissioner Prouty: Would that be true of a permanent reduction in price or is it only true of a spasmodic reduction in price which draws the attention of those people especially to that article?

Mr. Woodford: I think it is generally true, and particularly in recent seasons, when oranges have sold in the markets, cheaper than apples, which has been a fact.

Mr. Call: And in recent years there are new ways of getting the fruit to the consumer at less cost, are there not, Mr. Woodford, such as for instance the auctions, increasing the auction sales, permits the retailer to buy direct and eliminates the jobber's profit to some extent.

106 Mr. Woodford: The sales at auction I do not think have increased. The nine auction points at which California oranges are now sold at auction have been the same for years.

Mr. Call: That is in the points or quantities?

Mr. Woodford: The points at which fruit is sold.

Mr. Call: I was speaking about the quantity.

Mr. Woodford: In a large crop, when the crop becomes larger, I think the tendency is to have a little greater percentage sold at auction, there is a little greater percentage goes into auction sales.

Mr. Call: And the retailers there of course buy direct?

Mr. Woodford: In most auctions anybody can buy in ten to twenty box lots.

Mr. Call: In those markets the push cart has come in vogue in recent years, and selling larger quantities?

Mr. Woodford: The business is more in the hands of push carts and markets as it has increased in volume than was formerly the case where there were fewer oranges in the market.

Mr. Call: Did you make an investigation as to the cost to the retailer, say in a period of recent years compared with a period of former years, as to the price he paid?

Mr. Woodford: I don't recall any particular investigation. I know our——

107 Mr. Call: Have you evidence in the shape of a tabulation of market reports in various cities running over a period of time?

Mr. Woodford: We prepared a statement running over a good many years past showing the price per box of oranges to the retailer as shown by market quotations in the public press, but I don't know that we have any corresponding data at present except as we know by present knowledge as to about what the price is today.

Mr. Call: What has been the course of the price to the retailer?

Mr. Woodford: These records showed that the price to the retailers has been in the neighborhood of $1.00 a box less on oranges than it was six or eight or ten years ago.

Mr. Call: And have you any data or information as to whether your increase in quantity of oranges and your decrease in price is having the effect of reaching a different class of consumers?

Mr. Woodford: The consumption is increasing enormously; apparently that can only be done by reaching the common people. I think the consumption, that is the increase, has doubled in eight or ten years, and more than doubled probably.

Mr. Call: These oranges are packed securely, are they, in boxes?

108 Mr. Woodford: Each orange is wrapped in paper and put in boxes, according to size, as securely as possible.

Mr. Call: And each car securely loaded by the shipper?

Mr. Woodford: Loaded by the shipper as well as he knows how.

Mr. Call: And by whom is it unloaded?

Mr. Woodford: Unloaded by the purchaser, usually.

Mr. Call: What is the fact as regards the perishable character of the product, to what extent is it perishable?

Mr. Woodford: It is less perishable now than formerly; an orange that is not damaged in handling will stand up without loss to almost any market.

Mr. Call: The way it is now handled, and from your experience as to the deterioration or decay in route, is it any more perishable than apples or vegetables, that is, fresh vegetables?

Mr. Woodford: I do not think so. I do not think it is as perishable as many kinds of vegetables.

Mr. Call: How does it compare with deciduous fruit?

Mr. Woodford: Not as perishable in my judgment.

Mr. Call: Injury to the fruit in transit is the exception now, is it not, from any cause?

Mr. Woodford: You mean loss by decay?

Mr. Call: Loss by decay or any cause en route, without
109 taking into consideration railroad accidents.

Mr. Woodford: Loss by decay in transit is a very small fraction of what it was a few years ago, and that feature is one reason why the consumer gets the oranges cheaper than formerly, because the jobber and retailer before figured on large losses from decay, and now he figures if he buys 126 oranges in a box he sells 126 or very closely that amount rather than losing 10, 20, 30 or 40 per cent.

Mr. Call: Do you know what the jobbers' profit is, say in some of the representative cities like Chicago or Minneapolis?

Mr. Woodford: I think it varies in different cities. In Chicago the jobbers are satisfied according to the price with from 10 to 25 cents a box profit. That is one of the lowest profits in the country, Chicago. In some other places I think they want about 50 cents.

Mr. Norton: What places?

Mr. Woodford: Generally in smaller places, smaller markets. It takes longer to sell a car and there is less competition.

Mr. Call: Where they have to put traveling men on the road, and things of that kind?

Mr. Woodford: Yes, and not as large a market right at the door as they have in Chicago.

110 Mr. Call: What do you say as to the period of shipment as compared with former years of the California orange?

Mr. Woodford: Well, the period of shipment now is an all year round proposition. Formerly the oranges began to move, before we had the northern oranges, Tulare county oranges, they began to move about December 1st, very few before then; the shipments would cease in May. Then as the summer oranges, the Valencia lates, became much more plentiful, and as the crop of the earlier oranges in the interior growing sections like Tulare county increased, the business has become nearer an all year around business, so there is now no day any more but what a good many cars are shipped from the state.

Commissioner Prouty: Are oranges kept in cold storage?

Mr. Woodford: Not in any quantity at this end of the line. It has been tried a little at this end of the line but unsuccessfully, and I do not think that there is very much of it practiced at the other

end, unless it might be the later oranges which move in August or September; they might keep some of them in storage for the holiday trade, Valencia late oranges.

Mr. Call: What experience have you had with the pre-cooling and pre-icing form of shipment?

Mr. Woodford: We find that where fruit is put into a cold
111 temperature immediately when packed and brought down as soon as possible to a uniform temperature throughout the box of 35 degrees or a little less perhaps, that such shipments can be sent forward to any destination in the United States with one icing, the initial icing; the cold mass of fruit and the one icing will take them through to any market.

Commissioner Prouty: Will there be any ice in the bunkers when the car arrives at its destination?

Mr. Woodford: Not much. Our records show from 1000 pounds up to two or three thousand pounds usually. That would depend upon weather conditions in transit. It might vary some but relatively a slight quantity in the bunkers on arrival at destination.

Mr. Call: How does the condition of the fruit on arrival compare with the ordinary refrigeration method?

Mr. Woodford: It is better; it is the way to handle oranges in my opinion. And another feature, they can be loaded heavier, a heavier minimum for the fruit, if the fruit is cool. Ordinarily we load oranges and the minimum of the carriers provides for six boxes wide in the car, leaving a space between the boxes of four or five inches for ventilation in the case of a ventilated shipment, or an opportunity for the cold air to penetrate among the boxes
112 of oranges in the case of a refrigerated shipment; but where the cooling has all been done prior to putting the fruit in the car it is safe and practicable to load the boxes seven wide instead of six wide, which increases the minimum, of course, by one-seventh, and it probably is practicable to fill the car just as full as you can get it. We are not definitely sure about that yet; and even higher than two tiers high.

Mr. Call: These tiers you speak of——

Mr. Woodford: Two boxes on end.

Mr. Call: Two boxes on end, one on the other and six in width, making fourteen boxes to the tier for a ventilated car.

Mr. Woodford: Twelve boxes to the tier.

Mr. Call: Twelve boxes to the tier in a ventilated car and fourteen for a refrigerator or pre-cooled car?

Mr. Woodford: No, twelve boxes for a ventilated shipment and twelve boxes for an ordinary refrigerated shipment in the tier, and fourteen for a pre-cooled shipment.

Commissioner Prouty: Do you actually ship fourteen in the case of a pre-cooled shipment?

Mr. Woodford: We have done it pretty generally, and enough to know it is practicable.

113 Commissioner Lane: Would it be no disadvantage to you to raise the minimum on a pre-cooled shipment?

Mr. Woodford: I think, while there might be some objection on

the part of some shippers and some growers, that the very fact that the minimum has been increased from 300 boxes to a car, which it was some ten or a dozen years ago, to about 400 now, shows that you can make it 468 or 472 without any serious damage, if it can be done without damage in the one case it can be done in the other, and my opinion is that just so the fruit will carry safely, we will put in the car all it will hold under any method.

Commissioner Prouty: Have you made shipments enough so you are satisfied to say you are willing to have the minimum increased in pre-cooled shipments?

Mr. Woodford: For a pre-cooled and pre-iced shipment, if it is done right. Now there is a different opinion among some of us and between ourselves and the carriers on this pre-cooling and pre-icing proposition. Their idea as I understand it is to load a car six wide and two high and take it to a central point like Colton or San Bernardino and there blow cold air through the car and cool it in that manner. You could not load that seven wide and two high because it would interfere with the cooling but if the cooling
114 is done at the packing house, immediately when the fruit is packed, getting the oranges into the cold air as quick as possible and bringing them down so that every orange in the box is reduced to a temperature of 35 degrees or less, then you have a cold mass which will stand what the other method would not stand.

Mr. Call: And the time that the carriers propose to expose the fruit to the cold is short as compared with the time that our shippers expose it, is it not?

Mr. Woodford: I am not informed about what the carriers are going to do. I have heard all sorts of things, three to eight hours. It is a matter that they have not yet put into effect, it is a new thing, but it takes us from twenty-four to seventy-two hours to cool fruit in cold rooms at low temperature, a temperature of thirty degrees or lower, and with circulated air and I should say forty-eight hours to fairly cool the fruit so that every orange in the box is of the same temperature, down to 35 degrees or less. You can cool the outside oranges, but the interior of the box would still be warm and it would equalize afterwards, if it was not done right.

Commissioner Prouty: The cooling is done entirely after the oranges are packed?

115 Mr. Woodford: The cooling is entirely done after the oranges are packed. That is the practice, so far as I know, although there have been some plans proposed on the basis of cooling the fruit before it is packed, but I doubt if that is practicable.

Mr. Call: Outside of the plants which our Association have already constructed, have you any contract facilities for growers generally which they can avail themselves of in pre-cooling and pre-icing their fruit?

Mr. Woodford: We have an agreement with the Los Angeles Ice & Cold Storage Company in the City here, whereby they will pre-cool our fruit to a temperature of 35 degrees or less, about 17 cars a day that they think they can handle, and then would put in ice if we wanted it, at $2.25 a ton.

Commissioner Prouty: What is the expense of pre-cooling under your contract with the company?

Mr. Woodford: 25 cents a box and $2.25 a ton for ice in the bunkers.

Commissioner Lane: Your minimum is 22,000 pounds?

Mr. Woodford: The minimum is 26,700 pounds in oranges now with a provision—that is on the car that is most commonly in use, the 40 foot car, with the provision, however, in a car 37 feet long—
with the provision that the boxes must be loaded six wide
116 and two high. But our actual loadings on oranges have been
28,000 pounds or around that in the last two or three years. The minimum is 26,700, but the actual loading is 28,000, and with the collapsible ice bunkers, ice tanks, where the partition that separates the ice tank from the rest of the car is raised up, and you are permitted to load the space in a ventilated shipment that would be used for ice in a refrigerated shipment, 72 more boxes of fruit can be put in a car, which would increase the minimum by that much and make it about 32,000 or more.

Commissioner Lane: Well, that is the minimum which they apply on cars which do not require re-icing, is it not? I notice in your bill you speak of a tariff being put in as to pre-iced or pre-cooled shipments, do not re-ice in transit, a charge of $30.00 per car of 32,000 pounds or less?

Mr. Woodford: Yes.

Commissioner Lane: That is a new minimum, is it?

Mr. Call: It is the minimum on refrigerated shipments, and does not apply to ventilated shipments.

Mr. Woodford: Pre-cooled and pre-iced shipments and I think you can load less, but the $30.00 charge which the tariff provides for permits 32,000 pounds without any added charge; but if over
32,000 pounds were in the car the $30.00 would be increased
117 accordingly, that is as I understand it.

Commissioner Lane: That is the minimum as to the thirty dollars, that is your idea of it?

Mr. Woodford: Yes.

Mr. Norton: That is correct. The minimum for the thirty dollar car.

Mr. Call: That is also true, is it not, of refrigerated cars under the ordinary refrigeration, under the recent tariff, is it not?

Mr. Woodford: I did not get that question.

Mr. Call: I say the minimum is raised, is it not, on the regular refrigerator, in the old refrigeration way, that is you can put up to 32,000 pounds in without any increased price for refrigeration?

Mr. Woodford: I am not sure on that point. The tariff will speak for itself.

Mr. Call: So far as your experience enables you to judge, it does not make any difference how long the car is for ventilated shipments as long as they do not require a load over six wide and two high?

Mr. Woodford: That is my opinion.

Mr. Call: That is you can load the full length of the car
118 under these new collapsible cars with impunity, can you not, as long as the rule of six wide and two high prevails?

Mr. Woodford: Some of our shippers have held that perhaps the ventilators in the end of the car were not so constructed as to exclude rain and matters of that kind and to give proper ventilation, and they have had some doubts as to whether the car was going to be all right or not; but my opinion is it is all right, and we have had but little difficulty in getting them loaded. It is a new thing, these longer cars with the collapsible ice tank, but so far as our opinion is concerned, and I think among shippers generally, they are perfectly willing to load them six wide and two high, unless some detriment comes later that we do not know anything about, like the fruit getting wet through the end and things like that.

Mr. Call: And that loads 460 boxes to the car or about that?

Mr. Woodford: Well, about that. It depends on the car. Cars are of different lengths.

Mr. Call: The refrigeration period of oranges applies I suppose to nearly all shippers; that is a weather condition, is it not?

Mr. Woodford: Usually the oranges begin to go forward under refrigeration in the last days of March, hardly ever a car is
119 shipped under refrigeration in February, and by the first of April most shippers begin to move oranges under refrigeration. Some nearby markets like Denver or Salt Lake, we very seldom have oranges put under refrigeration.

Mr. Call: The object of refrigeration is what?

Mr. Woodford: Well, the object of refrigeration used to be to preserve the fruit and perhaps is now, to a certain extent, when it is very ripe, but it is more valuable in my opinion in preserving the freshness of the fruit and landing it in good condition in the eastern markets after the warm season is upon us.

Mr. Call: Preserving the appearance of it?

Mr. Woodford: Yes.

Mr. Call: I believe that is all.

Commissioner Prouty: What have oranges sold for this season?

Mr. Woodford: Oranges so far this season, insofar as our records, which are not made up, but as they show from day to day, are bringing some less price than last year, due almost wholly we think to two causes, Florida competition and some poor quality fruit from California. Increased competition from Florida——

Commissioner Prouty: Is your fruit of an inferior quality
120 this year?

Mr. Woodford: We had some cold damage in some sections, some frost damage, which hurt the fruit quite materially in certain sections. We also had frost damage last season. It was more general last year, applying in more sections, but not as severe last year in any section as it is this year in two or three localities.

Mr. Durbrow: Well, the damage by frost last year did have some effect on the price of the fruit?

Mr. Woodford: Some, I think.

Mr. Durbrow: Just as it did this year?

Mr. Woodford: There is something pretty nearly every year which has an effect on the price of the fruit, in damage to quality.

Mr. John H. Call: What do you figure was the extent of the damage by frost this year to oranges and lemons?

Mr. Woodford: I think probably 10 per cent of the crop or very nearly that much will not be shipped on account of frost and wind damage. Last season the frost damage interfered somewhat with the quality, but there was no appreciable diminution in shipments, nearly everything went forward.

Commissioner Prouty: You spoke of the wind damage.
121 What is the character of that damage?

Mr. Woodford: It bruises the oranges; the oranges become damaged in appearance by hitting against the limbs or leaves of the tree and the result is a scarred orange which interferes very much with the price you receive for it. It does not look good. Very often the fruit is blown off or drops as the season progresses.

Mr. J. H. Call: The extent of the damage is about the same to lemons as to oranges?

Mr. Woodford: Not as severe to lemons, the frost damage, for the reason that lemons are mostly on frostless ground, ground that is not as susceptible to frost.

Mr. Durbrow: As a result of this damage some of the fruit was not shipped east at all?

Mr. Woodford: Some fell to the ground and went to waste.

Mr. Durbrow: But you did ship some fruit which was affected by climatic conditions, the wind or frost, and for that you received less price, and of course the average price you will receive for your fruit this year will be affected by those conditions?

Mr. Woodford: Somewhat.

Mr. Durbrow: To what extent would you attribute the difference in the selling price this season as compared with a normal
122 season to those causes?

Mr. Woodford: On the whole crop I should think it would make but little difference per box, but a few cents, because about two-thirds of the territory was undamaged by frost the present season, and the other one-third in varying degrees, so putting it all together it does not reduce the average very much.

Mr. Call: I have no further questions.

Commissioner Prouty: You may proceed with the cross-examination now.

Cross-examination:

Mr. Norton: Recurring for a moment to the offer of your counsel to introduce in evidence an extract from the debates in Congress respecting the lemon rate, did you have any assurance from any of the common carriers that the rate of $1.00 on lemons was a permanent rate?

Mr. Woodford: No more than we did with reference to the orange rate; we did not have any assurance that it was not on the same basis as the orange rate.

Mr. Norton: Did you testify before the Congressional Committee?

Mr. Woodford: I did not.

Mr. Norton: The point I was getting at was the authority
123 that there was on anybody's part either in or out of Congress, to even suggest that carriers had intended that the one dollar rate on lemons was permanent.

Mr. Woodford: Well, I do not think that there was authority given to anyone on that point at Washington, and as I understand Senator Flint, he simply said that the question was settled by hearings and so forth.

Mr. Norton: That is all I wanted to get at on that matter, that so far as this company was concerned no such authority was given.

Mr. Call: It was not with that thought in mind, that any authority had been given to anybody. All we were trying to arrive at was the intention of Congress as arrived at from the debate.

Commissioner Prouty: The question was not admitted and we will not spend any time on that.

Mr. Norton: My understand- was——

Commissioner Prouty: You understand that the complainants claim by their petition that they had the right to assume that this lemon rate would continue, and on that proposition you can cross examine.

Mr. Norton: I show you a letter dated November 2, 1908,
124 signed by B. A. Woodford, General Manager, and on the letter head of the California Fruit Growers Exchange, and I ask you whether you are the author of the letter, addressed to W. G. Barnwell, whom I may state is the General Freight Agent of the Santa Fe Company at Los Angeles?

Mr. Woodford: Yes, sir; I think that counsel has a copy of the letter.

Mr. Norton: I desire to read this into the record omitting the letter head print:

"NOVEMBER 2, 1906.

Mr. W. G. Barnwell, City.

DEAR SIR: Regarding lemon rate. Confirming my personal conversation with you this morning with reference to the lemon rate, which you brought up on account of an inquiry from Mr. Chambers on the subject, will say that we do not think it would be policy from the standpoint of the transportation company, to change the rate on lemons in the near future, for the following reasons:

(1) The prices that have prevailed on lemons during the past two seasons are largely due to conditions of crop in Sicily,
125 where a heavy frost two years ago, not only destroyed immense quantities of lemons then upon the trees, but affected the bearing capacity of the trees to such an extent that the Sicily crop for the last two seasons, has been light.

Our advices from our own man on the ground in Sicily are, that the lemon trees have now recovered their vigor and that, we may expect normal shipments again the coming season. It is likely, therefore, that lemon prices will drop back to something like what prevailed before the last two seasons, and I think that no intelligent

lemon grower is expecting that these abnormal prices that have prevailed, will continue longer.

(2) On account of the disastrous conditions that prevailed prior to the last two years in the lemon business, and the very low prices that we received, growers for the most part have been skeptical about the higher prices continuing and have considered that the last two seasons were simply freak seasons. For this reason, the setting of new acreage of lemons has been extremely light. But there is at the present time, a very strong demand for lemon trees, orchardists are willing to set out new acreage, but the nurserymen have not the trees. I understand that the nurserymen are now budding their seed bed stock to lemons, anticipating a great demand for
126 lemon trees, but these will not be ready for setting until a year from next spring.

(3) I take it that what the transportation companies wish is to encourage the setting of lemons to such an extent that instead of supplying 40 per cent. of the entire quantity consumed in the United States, we may, within a few years, supply 75 or 80 per cent. as we do now in oranges, thus doubling the lemon output of the state.

(4) If lower prices the coming season should result on account of an increased supply of foreign lemons, which we may expect, and on account of also an increase in the freight rate, the inevitable result, in my judgment, would be to discourage the setting of lemons, and what both ourselves and the transportation companies desire, viz., a large increase in the output, would be in a measure defeated.

Under the circumstances, therefore, from a purely transportation standpoint, it would seem to me the proper thing to do is to let things alone for the present.

Yours truly,

B. A. WOODFORD,
General Manager."

127 Mr. Norton: The letter of Mr. Chambers to Mr. Barnwell, to which you refer, you had seen, had you?

Mr. Woodford: Mr. Barnwell, as I remember it, had some talk with me in his office on this subject, and this letter was written confirming the conversation.

Mr. Norton: I desire to read a short letter of Mr. Chambers to Mr. Barnwell, dated San Francisco, October 27, 1906:

Mr. W. G. Barnwell, Personal, General Freight Agent, Los Angeles.

DEAR SIR: What is your opinion about advance in the rate on lemons, carloads, eastbound, to the same figure we are carrying on oranges. I notice shippers have been getting very high prices for lemons for the past year and it looks as though it might continue for another year.

It seems under such conditions we should get an advance in the rate but of course before taking any steps of this kind I want to be sure of our ground. It may be well for you to discuss the matter with Mr. Woodford and get his views. Let me hear from you later

Yours truly,

EDWARD CHAMBERS."

128 Mr. Norton: When we put Mr. Chambers on the stand we will have something more on that point. Now you speak about the decay of the lemons, and I presume what we say about the lemons regarding refrigeration will apply also to oranges?

Mr. Woodford: They are not exactly alike, but we were talking about oranges on the refrigeration more particularly than on lemons.

Mr. Norton: We will take up the lemon question first, since it was covered first by your direct examination. Can you tell me what was the percentage of decay in the lemons in storage previous to the putting in of the first emergency rate?

Commissioner Prouty: Just what do you mean by that, Mr. Norton? Decay of the lemons in storage, you say?

Mr. Norton: Yes. I am getting at——

Commissioner Prouty: Where were the lemons stored, here?

Mr. Norton: Yes, before shipment, as they are stored now in larger quantities.

Mr. Woodford: Lemons are handled differently from oranges. In explanation of the storage part of it, they are picked green largely and are put in houses, and if the lemon is good, a live, vigorous lemon, it may be held one or two or three or four months, in ordinary storage, not cold storage.

129 Commissioner Prouty: Are they packed before they are held in storage?

Mr. Woodford: No, held loosely in boxes or trays.

Mr. Norton: Beginning at the other end, what is the percentage of the decay of lemons now in storage under your present method?

Mr. Woodford: It does not vary much, if any, from what it was years ago.

Mr. Norton: How many years ago?

Mr. Woodford: Oh, a dozen or eight or ten.

Mr. Norton: Were you able to keep lemons in storage as long and in as good condition ten years ago as today?

Mr. Woodford: Methods have improved, but there was always loss in decay. Last year was one of the heaviest years in loss from decay that we have ever had.

Mr. Norton: Have you any figures on that?

Mr. Woodford: We have, we have some figures——

Mr. Norton: Will you please produce figures showing the decay of lemons previous to putting in the first emergency rate. When was the first emergency rate put in?

Mr. Woodford: I think in the fall of 1902.

Commissioner Prouty: Let us understand a little bit about
130 this. When the lemon is picked by the grower, what is done with it?

Mr. Woodford: It depends on the season. If there is a big demand for lemons and a light supply, it is gotten ready for shipment and shipped as soon as possible.

Commissioner Prouty: But where is it gotten ready and who gets it ready?

Mr. Woodford: These Associations of Growers who own these packing houses in the producing territory.

Commissioner Prouty: So the grower of lemons usually belongs to one of these associations?

Mr. Woodford: Yes, sir.

Commissioner Prouty: His lemons go to the packing house of the association?

Mr. Woodford: Yes, sir.

Commissioner Prouty: And they are there packed and sent on by the association or held in storage?

Mr. Woodford: Yes, sir.

Commissioner Prouty: He does not undertake to hold them on his own responsibility?

Mr. Woodford: Not usually, unless he is a very large grower. Replying to Mr. Norton's question, we have two lemon as-
131 sociations who have kept accurate data as to the fruit weighed into their respective packing houses green and the net weight shipped out from the beginning of their organization, one running some fifteen years and one running some nine years.

Mr. Norton: That will show shrinkage?

Mr. Woodford: It shows shrinkage, and those figures we have in the form of statements from those associations, and while they are not here, I can get them for you, and it shows an average loss in storage of about 12 per cent, and last year was rather a heavy year in loss. I do not think there is any very great variation as between the earlier history and later history, but there is variation between years.

Mr. Norton: Then we are to understand from that that you have no better method of storing lemons now, than you had twelve years ago?

Mr. Woodford: I do not think that is true. I think the handling of the lemon has improved in the last few years, but the losses from decay might not be altogether due to the handling. The lemon in a certain year might not be as good as the lemon in another year, and therefore the losses would be heavier with the same handling and the same time of holding in one season than it would be
132 in another, due to the natural condition of the fruit itself when packed.

Mr. Norton: Are you acquainted with the reports of Professor Powell of the Government Service on Pomology?

Mr. Woodford: Yes.

Mr. Norton: You understand from those reports what I am getting at? Do I understand that last year your decay of lemons in storage was 12 per cent?

Mr. Woodford: I would not want to say. For an average of all the years on the average that these two associations have kept their records it is about 12 per cent and last year was rather a heavy year for decay.

Mr. Norton: That is not getting at my question. What was it in 1904? What was the percentage for decay that year in storage?

Mr. Woodford: I cannot give you that offhand.

Mr. Norton: Can you get that and tell us?

Mr. Woodford: I can get these two letters.

Mr. Norton: And what was the percentage of decay last year?

Mr. Woodford: These letters will show the most accurate information I have.

Mr. Norton: Can you tell what was the percentage of
133 decay in transit in 1904?

Mr. Woodford: I could not give that without an awful lot of work.

Mr. Norton: Can you get that?

Mr. Woodford: That would be an awful job.

Mr. Norton: You have some calculations on that?

Mr. Woodford: I don't know; we would have to go to the jacket of each shipment, of which there are several thousand, and build up the records from what those jackets contain, and if they have been preserved we can get you that information, but I doubt if we could.

Mr. Norton: Your methods of bookkeeping are not that loose. Haven't you kept any track of the decay in transit from year to year?

Mr. Woodford: Not any such method as that.

Mr. Norton: Can you give it for last season?

Mr. Woodford: Not in that shape.

Mr. Norton: In what shape can you get it?

Mr. Woodford: Only as I state, from the report of the Association which has kept the record.

Mr. Norton: The associations constituting your Exchange?

Mr. Woodford: Yes.

134 Mr. Norton: Well, generally the decay both in storage and transit has very materially reduced, as I understand it?

Mr. Woodford: In lemons?

Mr. Norton: Yes.

Mr. Woodford: I am not sure that is a fact. I want to just correct what apparently is running in your mind.

Mr. Norton: Never mind what is in my mind, but just answer my questions.

Mr. Woodford: Mr. Powell's report and his data furnished were on oranges, which they investigated in this country for a period of some four or five years, and they only began the investigation of the handling of lemons, the government people, and the changes in methods, a year ago, and they have still got three or four years to run, and the improvement in the handling of lemons does not show like it does in the handling of oranges. People have not been educated yet in the handling of lemons.

Mr. Norton: Can you tell what part of your product went into storage before being shipped East in 1904?

Mr. Woodford: I cannot tell you that.

Mr. Norton: Large or small?

Mr. Woodford: I cannot tell you.

Mr. Norton: Cannot you recall whether you shipped it
135 directly from the trees to the market or not?

Mr. Woodford: We always——

Mr. Norton: You are speaking of lemons now?

Mr. Woodford: Lemons. We always put in, any year, so far as I know, the business, some lemons in storage, but the relative

amount in each year we keep—I have kept no record and my office has kept no record, and I cannot give it to you one year with another.

Mr. Norton: Can you tell in a general way what proportion of the crop last year or the year before went into storage before going East?

Mr. Woodford: I think one time last year there was something like fifteen hundred cars of lemons in storage in California.

Mr. Norton: How many cars were there all together?

Mr. Woodford: Their shipments last year were 6,150 cars of lemons.

Mr. Norton: And 1500 went in storage?

Mr. Woodford: Went in storage at one time.

Mr. Norton: How many all the season?

Mr. Woodford: We have no record which would show that.

Mr. Norton: Can you state in a general way whether or not the proportion of the crop which goes into storage is much
136 greater than it used to be?

Mr. Woodford: I cannot say as to that.

Mr. Norton: What is the time, if I may ask a question which you have already answered I believe, what is the time of the heaviest movement of Italian lemons into the American market?

Mr. Woodford: I should say in April, May and June, along in the spring of the year.

Mr. Norton: And you store your lemons here in California until that movement has passed?

Mr. Woodford: No, that is the very thing we do not do.

Mr. Norton: What do you do?

Mr. Woodford: We do just as the Italians do; the heavy pick of lemons, in the case of either Sicily or ourselves usually comes along in December, January, February and March. It is customary in both producing countries to delay shipments of part of that production until the warmer weather comes and there is a greater demand for the fruit.

Mr. Norton: Do you delay now relatively a greater portion or a less portion of your total crop than you did formerly?

Mr. Woodford: I could not answer that question. We have no figures which show.

Mr. Norton: Can't you tell in a general way from your
137 expert knowledge of the situation?

Mr. Woodford: We could tell by comparing our shipments if we have them in proper form, month by month for different seasons.

Mr. Norton: I had the understanding that the lemon is held here six months, that you hold lemons in storage six months?

Mr. Woodford: It can be done.

Mr. Norton: With comparatively no decay?

Mr. Woodford: It depends upon the lemon. A good lemon full of life can be held with comparatively no decay if it is handled right for six months.

Mr. Norton: And you have a good lemon?

Mr. Woodford: Sometimes, some seasons.

Mr. Norton: And is it a better lemon than it used to be?
Mr. Woodford: I do not think so.
Mr. Norton: What?
Mr. Woodford: I do not think so.
Mr. Norton: No improvement has been made in the texture or quality of the lemon?
Mr. Woodford: I do not think so, not naturally from the tree, I do not think there is any great difference.

Mr. Norton: My understanding also is that you ship now
138 with comparatively no decay in transit?

Mr. Woodford: Well, that is not true. We have every season——
Mr. Norton: Who among you could tell about that, who knows most about it?
Mr. Woodford: I think I know as much as anybody else.
Mr. Norton: I am not getting much information on the subject from you. I think I can give you more than you will give me.
Mr. Woodford: All right, you might make a better witness.
Mr. Norton: Do you hold lemons in storage longer than six months waiting satisfactory market conditions?
Mr. Woodford: The custom with reference to the storage of lemons is as the quantity of the pickings increases, say along in December or January, to begin to put the surplus that is not wanted in the market in storage, and that continues for three or four months, then they begin to move it out, and ordinarily the most of those lemons that have been put in storage are moved, the greater quantity of them, before July or anyway before the end of July, and most of them before the first of July.
Mr. Call: I want to say to facilitate your work the Exchange has nothing to do with the fruit until it is ready for market; it is just a marketing agency.

139 Mr. Woodford: We do not direct the holding of these lemons; the Association in the country does as it pleases.

Mr. Norton: That is the reason I asked what man can give the information.
Mr. Call: We can furnish a man from each association to give his experience.
Commissioner Prouty: If you can hold a lemon from one to six months in storage without injury, why does it injure in transit in six to ten days?
Mr. Woodford: I think I can explain that to you, Mr. Commissioner. In storing lemons, particularly in the interior of this country, they are put in houses prepared for the purpose and in blocks of perhaps a carload in a block with a tent over the fruit, a canvas tent, just like an ordinary awning tent, made out of the same material, and the outer lemons in this long dry summer that we have here, beginning with May and running into May and June, that is sixty days, become soft and deteriorate, while in the interior of these blocks, a carload in a place, the fruit retains its freshness and firmness and life. The outer sides of the pile become soft. Now that is a low grade fruit, and that will rot. Under the storage method

there is a certain part of the fruit, and especially in the in-
140 terior of the country where the weather is the hottest, that rots, it becomes low grade, and rots. That is a part of the process.

Mr. Norton: I understood you to say that Mr. Powell of the Government Service had made no study of the lemon industry with respect to decay, and caring for it in refrigeration?

Mr. Woodford: I did not say he had made no study.

Mr. Norton: And had rendered you no report or had rendered you no assistance?

Mr. Woodford: I said that Mr. Powell's report had been largely on the orange industry and for five or six years last past, and beginning with last season they had switched from the orange industry and were pursuing the same investigation as to the handling methods with the lemons now.

Mr. Norton: Do you know whether the lemon growers and handlers have taken up with any of his suggestions for the more careful handling of lemons and storage?

Mr. Woodford: I think they have. I think it showed remarkably good effects in some quarters where they have taken it up.

Mr. Norton: You have had results then?

Mr. Woodford: In some sections, particularly at Santa Barbara.

Mr. Norton: I did not catch the f. o. b. price which you gave for lemons into the southeastern territory. You stated that on
141 your direct examination?

Mr. Woodford: I don't think I stated that.

Mr. Norton: I thought you did. Can you state it now?

Mr. Woodford: I cannot state it except that it is less than the—the Atlantic Coast territory including the Gulf would be the lowest prices that we receive.

Mr. Norton: Do you keep in your Exchange the record of the f. o. b. prices in California on lemons and oranges from year to year?

Mr. Woodford: We keep a record of actual results received f. o. b. the car California for the different years by month.

Mr. Norton: And in these three different territories that you enumerated at the beginning of your testimony this morning?

Mr. Woodford: In all territories.

Commissioner Prouty: Is it summarized as to all territory, or is there one price as to one territory and another as to another?

Mr. Call: We keep it both ways, I guess.

Mr. Woodford: We keep the results in each market in which we have an agency separate.

Commissioner Prouty: Each city?

Mr. Woodford: Each district. For instance, Buffalo covers
142 surrounding territory.

Mr. Norton: Will you prepare a table and let us have it showing for the last five years——

Mr. Woodford: For the last five years?

Mr. Norton: Yes. The f. o. b. prices on lemons, and in another column, on oranges; those destined, say to New York, Boston and

Buffalo, and then at Chicago, Kansas City and St. Louis and Detroit, and say Winnipeg and Montreal in Canada.

Mr. Woodford: I do not think we can give it to you for five years. We began that method of keeping the records I think the second or third year back. Prior to that we haven't it.

Mr. Norton: Well as far back as your records go then.

Mr. Call: Send us a list of the towns and we will prepare it for you as far back as we go.

Mr. Norton: Yes, the reporter has that; including the southeastern territory that we have just asked about; Birmingham in the southeastern territory.

Mr. Woodford: We do very little business in that territory.

Mr. Norton: Well, Birmingham and Nashville in that territory. I understood you to say in your direct examination that you have in California one grade of lemon that has no superior in Italy.

143 Mr. Woodford: Well, I don't know that I said that. I think we have one grade of lemon that is as good as any other. I will say it now. That is our best grade of lemon compares very favorably with the best grade of Italian.

Mr. Norton: Do your records show what the production is per acre in pounds of oranges and lemons on your full bearing orchards?

Mr. Woodford: We have no such record.

Commissioner Prouty: He has no data of that kind I understand. They will introduce some other witness.

Mr. Call: We will produce a witness who has compiled those statistics.

Mr. Norton: Very well.

Mr. Woodford: Let me make a statement if you will. My familiarity with this business lies from getting this product from the tree into the market and bringing the money back.

Mr. Norton: You spoke in your direct testimony of a considerable acreage, I believe you say about two thousand acres of lemons that had been dug up or budded *ro* oranges.

Mr. Woodford: How many acres, five or six thousand; several thousand acres.

Mr. Norton: Well, several thousand acres.

144 Mr. Woodford: That is six or seven years ago.

Mr. Norton: Can you state what percentage of increase of acreage there has been in the lemon orchards in California in say the last eleven years?

Commissioner Prouty: Now, Mr. Call stated they would produce some other witness who would be able to give you about the increase in the acreage of lemons in the last five or six years. Have you any knowledge of the present acreage or the increase of acreage?

Mr. Woodford: I have some knowledge as to acreage. I have some——

Commissioner Prouty: It is hardly worth while going over this ground with two or three witnesses. Do you intend to produce some other witness who will swear as to the acreage?

Mr. Call: I have a witness who has familiarized himself with the

condition of the orange industry including the acreage and also a witness with regard to the lemon industry.

Commissioner Prouty: This witness is only testifying in a very general way as to the acreage. I think you had better omit that until the other witness comes on the stand.

Mr. Norton: Well, he can do it.

Commissioner Prouty: Yes, he can only testify in a general way.

145 Mr. Norton: I would like to ask a question about this budding back. Do you know of any localities where trees were budded back to oranges or dug up on account of frost?

Mr. Woodford: I think frost entered into it in almost all sections, but the budding over was not confined to that proposition; there was a general budding over particularly in the frosted section.

Mr. Norton: That is all I want on that.

Mr. Woodford: I might add in that connection that Corona is the frostless belt and one of the best sections, still there was a heavy budding over in Corona.

Mr. Norton: At Corona were any lemons planted in what was known as orange ground, do you know?

Mr. Woodford: I don't know any distinction at Corona between orange and lemon ground. I think it is generally good for both.

Mr. Norton: Did they have any facilities for handling or storing lemons at Corona at the time they were budding back or do you know?

Mr. Woodford: As much as anywhere else. The facilities have largely increased as the crop has increased.

Mr. Norton: Those tabulations I have asked you to make up I wish you would make including the present season, if you

146 can. I think that is all.

Mr. Durbrow: As I understand from you, your duties are confined to the marketing of the lemon and orange crop which is produced in California?

Mr. Woodford: As agent for a certain number of the growers.

Mr. Durbrow: You have given us a general outline of the organization of the Exchange of which you are the General Manager, and I understand it was organized primarily for the purpose of marketing this citrus crop; that is a fact?

Mr. Woodford: The packing and marketing, that is, the various sub-organizations considered as well.

Mr. Durbrow: So that you are not qualified particularly except as your general knowledge goes to enlighten us particularly on the manner of production and the cost of production, but you do know, as I understand, how the crop is marketed and how the crop is handled, so that it may reach the different markets and obtain the highest prices; that is your principal object as the General Manager of this concern.

Mr. Woodford: You have described the situation fairly accurately.

Mr. Durbrow: I want to ask you, if you please, how the crop when it is picked from the tree is placed under your supervision?

Mr. Woodford: These associations of growers in the pro-
147 ducing territory pick and pack the fruit, put it into a car and ship it, either without an order or with one, to such markets in the country as they may, each one for himself, select.

Mr. Durbrow: Now you have some organization, as I understand from your testimony, in the East. You have representatives at these eastern markets who represent you and indirectly the people who employ you to market their commodity?

Mr. Woodford: We have a District Manager and an office in all the principal markets of the United States and Canada and one in London.

Mr. Durbrow: Do they report to you?

Mr. Woodford: They report to our office direct and the market information is all sent out the same night to these branches in the country.

Mr. Durbrow: After a shipper has placed his fruit upon a car he has the privilege under the tariff which is now effective of shipping that to any point practically in the United States under this blanket rate, and he may ship it to some known consignee or he may ship it to his own order at some market and those are called tramp cars, but, however that may be, the cars move forward to some eastern
148 destination. Now are you advised by that shipper as to which destination his car is headed or what ultimate destination it is supposed to be?

Mr. Woodford: He makes the destination and it shows on the original papers, which he sends into our office.

Mr. Durbrow: It is his destination—after that car leaves his possession and after the railroads issue to him a waybill or shipping receipt, does he have any further concern with that car, does he direct its movement and say where it shall be sold?

Mr. Woodford: He does——

Mr. Durbrow: Does he do that directly himself by taking it up through the railroad company, or does he do it through you?

Mr. Woodford: Through our office.

Mr. Durbrow: So this shipper we have assumed is making a shipment to some particular destination looks to you to have that car reach the destination he has chosen, and you keep him advised, I presume, as to the market conditions in these different markets in the United States?

Mr. Woodford: All the time, he knows as much as we do, and has the same information.

Mr. Durbrow: But if he wishes to, he checks the car up with you, am I correct?

149 Mr. Woodford: He tells us what to do.

Mr. Durbrow: He tells you what to do?

Mr. Woodford: In the case of a car destined to Chicago for instance and our agent says that it cannot be sold there as advantageously as elsewhere, the wire from our agent will come to us in my office, and we at once confer with the shipper and ask what he wants done with it and he gives us the instruction.

Mr. Durbrow: These eastern representatives keep you advised constantly, I suppose——

Mr. Woodford: Daily, by wire.

Mr. Durbrow: As to the different market conditions, and what fruit is moved in from other sections, so you in turn advise the shipper where he may best dispose of his product at the best advantage?

Mr. Woodford: All have the same advice.

Mr. Durbrow: I want to ask you if you will tell me with as much precision as possible what market the California shipper disposes of his commodity in where he does not meet any compensation, so far as lemons are concerned?

Mr. Woodford: West of the Mississippi River.

Mr. Durbrow: West of the Mississippi River?

Mr. Woodford: He meets very little competition except on
150 the border, outside of California.

Mr. Durbrow: So we may say then in the United States, and I suppose the same applies to western Canada, the lemon shipper does not meet any competition whatsoever, or if he does meet any competition, it is such a slight competition that he may easily overcome it of course by his geographical advantages?

Mr. Woodford: He would meet competition in this way, if the price of foreign lemons should be for any reason extremely cheap, it would finally affect him.

Mr. Durbrow: It would finally affect him?

Mr. Woodford: Yes, and I say west of the Mississippi River; I would want to qualify that statement on the territory bordering on the Gulf, Louisiana and Arkansas and eastern Texas; that we consider as much competition there as anywhere; in fact, New Orleans is a port of entry.

Mr. Durbrow: I understand, but we are speaking of a very large question here and I want a general answer, that so far as west of the Mississippi River is concerned, the California shipper of lemons is supreme?

Mr. Woodford: Well, not altogether supreme.

Mr. Durbrow: How far——

Mr. Woodford: Well, I stated on my previous examina-
151 tion that we had competition last year from foreign lemons in Oklahoma, Topeka, Kansas City and Iowa points, all of which are west of the Mississippi River.

Mr. Durbrow: Yes, you had competition——

Commissioner Prouty: Are lemons imported through Galveston?

Mr. Durbrow: I do not understand that they are, but through New Orleans.

Commissioner Prouty: Through Galveston?

Mr. Woodford: I think not. Foreign lemons are shipped from New York through Galveston.

Commissioner Prouty: But they would come to New York first?

Mr. Woodford: And by boat to Galveston and up into Texas.

Mr. Durbrow: You have stated, as I understand it, that about five thousand cars of lemons is the maximum production in California?

Mr. Woodford: In any year except last year, and last year was an abnormal crop, and we had 6150 or something like that.

Mr. Durbrow: Do you know how many cars of lemons are consumed west of the Mississippi River?

Mr. Woodford: About half of our production except last season, when we went a little farther east.

152 Mr. Durbrow: About one-half of your production?

Mr. Woodford: Of the California production about 2500 cars from California.

Mr. Durbrow: Do any other lemons get into that territory?

Mr. Woodford: Except as indicated in the southern part of the territory, in Texas, Arkansas and Louisiana and along the states bordering on the Mississippi River, very seldom.

Mr. Durbrow: So your crop is sufficient to supply these markets in here west of the Mississippi River?

Mr. Woodford: It is 100 per cent too large; that is, twice the quantity that those markets require.

Mr. Durbrow: I understand from you that 70,000 cars of lemons are produced in Italy?

Mr. Woodford: 69000 cars in 1908 according to the Consul's report.

Mr. Durbrow: Do you know how many cars of lemons have been sold east of the Mississippi River?

Mr. Woodford: The consumption in the United States is about twelve thousand cars annually.

Mr. Durbrow: About twelve thousand cars anyway, so that the fact appears that the California grower and shipper of lemons is able to supply one-half of the necessities of the American

153 people.

Mr. Woodford: About 40 per cent, except last year.

Mr. Durbrow: About 40 per cent, except last year, and some of your lemons do, as a matter of fact, go up into British Columbia and western Canada? How many cars of lemons in a general way have you disposed of in that territory?

Mr. Woodford: A very small quantity compared with the full amount. I could not give you that information, it is mostly in small lots, in cars of oranges, and we have——

Mr. Durbrow: Yes, but you supply that entire territory?

Mr. Woodford: Yes, in British Columbia.

Mr. Durbrow: Could you approximate the number of cars of lemons you ship in there annually?

Mr. Woodford: I should not think there would be more than twenty-five cars.

Mr. Durbrow: Only twenty-five cars?

Mr. Woodford: That is a guess, but I should not think more than that.

Mr. Durbrow: So that leaves you out of your average crop about two thousand cars of lemons to dispose of in territory east of the Mississippi River?

Mr. Woodford: It leaves us out of an average crop of

154 about twenty-five hundred cars to dispose of east of the Mississippi River.

Mr. Durbrow: About twenty-five hundred cars to dispose of east of the Mississippi River. Now some seasons of the year you are able to reach those eastern markets when they are not glutted by this Sicilian product, and you are able to practically control that market, is it not a fact, at that time?

Mr. Woodford: There is not any such thing as control, because the quantity is very limited and the demand very great.

Mr. Durbrow: Well, I say that so far as prices are concerned, you are able to control that market at seasons of the year when the Sicilian lemon is not moving in there?

Mr. Woodford: The situation is, that in some seasons, in the months of October and November particularly, when our first shipments of the new crop are ready for forwarding, the Sicilian first shipments being ready at the same time, we can get to New York in twelve days and the Sicilian in thirty days, and we have an advantage for a short time there and get some very fine prices out of those markets.

Mr. Durbrow: Get some very fine prices?

Mr. Woodford: For a few days.

Commissioner Lane: What time does it take to bring the
155 Sicilian lemons over to New York?

Mr. Woodford: I think that ordinarily it takes about thirty days. They do sometimes, I believe, make shipment from the Mediterranean to London and send small lots across on the fast passenger ship from London and in such case they get around a good deal quicker, but that is only a small quantity to strike some particularly high market.

Mr. Durbrow: So you have the market to yourselves for about eighteen days?

Mr. Woodford: We have that eighteen days advantage in the market. It is generally a declining market, but we are ahead of the other fellow that much.

Mr. Durbrow: You divided the territory of the United States into three grand divisions. The first was this territory we have been speaking of where you meet no competition to speak of and the second is the territory lying east of the Mississippi River and west of the Allegheny mountains, and then you also defined the territory lying east of the Allegheny mountains along the seaboard?

Mr. Woodford: And the Gulf.

Mr. Durbrow: And the Gulf. Can you tell us about how many cars of this 2500 cars which go east of the River are disposed
156 of west of the Allegheny mountains?

Mr. Woodford: I have already stated about two-thirds of the twenty-five hundred, which would be sixteen hundred in that middle territory and eight hundred in the Atlantic Coast territory.

Mr. Durbrow: What fixes the price that the California shipper receives for his lemons disposed of in that territory?

Mr. Woodford: The price of the foreign lemon.

Mr. Durbrow: The price of the foreign lemon?

Mr. Woodford: Absolutely.

Mr. Durbrow: I want to ask you please how far the foreign lemon fixes the price of the California lemons in that territory?

Mr. Woodford: As far as there is any competition.

Mr. Durbrow: As far as there is any competition; how far does that competition extend?

Mr. Woodford: It extends to the Mississippi River and in some isolated cases over; for instance, it extends up into Sioux Falls, South Dakota, which has been a market for years that takes foreign lemons.

Mr. Durbrow: I wanted to know how far that competition affected you in disposing of your output there in that territory?

157 Mr. Woodford: It affects us acutely to the Mississippi River, and ordinarily only in a slight degree on this side of the Mississippi River, although that would cease to be the case if foreign lemons were very cheap in New York, for the reason that California shippers would try to force a larger quantity into their own exclusive territory, and the price of foreign lemons would go down; in other words, the foreign price on lemons does have an effect on every market in the country.

Mr. Durbrow: You meet a severer competition of course east of the Allegheny mountains than you do west of that line, for the reason that the Sicilian lemons when they are landed at the Seaboard along the Atlantic Coast are not obliged to pay any transportation rate by rail to reach the market?

Mr. Woodford: The further we go the more severe the competition.

Mr. Durbrow: I want to ask you why it is that one-third or one-half of the entire crop that is marketed in that Atlantic territory is marketed there instead of in the territory where you have a greater advantage over the Sicilian growers because of the fact that they would have to pay an added freight rate by rail to the ocean rate which they pay from Sicily?

Mr. Woodford: Because it takes two to make a bargain,

158 and some of the trade are wedded to the Sicilian product and it is hard to dislodge them.

Mr. Durbrow: I understand that is the natural field for the Sicilian man to market his product, but you go in there right at the dock where the vessels come and land and meet them in the disposing of your stock. Do some people prefer the California lemons in there?

Mr. Woodford: We do not go there into New York, for instance, only at certain seasons of the year when the market conditions are favorable or we are forced in there because we have a surplus which we cannot sell to better advantage elsewhere.

Mr. Durbrow: And because of the peculiar nature of a lemon as contra-distinguished from an orange, particularly having reference to its keeping qualities, you can put the lemons in there at the New York or the Atlantic Seaboard markets at such times as the Sicilian lemons are not reaching those particular points.

Mr. Woodford: Well, that is not the time we go.

Mr. Durbrow: That is not the time you go?

Mr. Woodford: No, the time we go to the New York market is

when we have a new crop of lemons that is picked fresh from the tree in the fall, and is put under heat in order to change the
159 color from green to yellow to get it off to that market as quick as we can before the foreign fellow gets there; that is when we go.

Mr. Durbrow: I cannot understand, if the consumption is so great in the territories where the Sicilian producer is at a greater disadvantage, you do not market your crop there rather than go on to New York. I cannot understand it and you have not explained it to my satisfaction. I wish you would endeavor to do so.

Mr. Woodford: Take Cincinnati and Louisville, for instance, Louisville particularly; the trade in both places, and in fact in most markets of the United States, is controlled by Italians and in Louisville as one point, the Italians arrange for their supply with their home people in Italy and it is almost impossible to dislodge them from the Louisville market. The jobbers and the trade give the preference to the Italian lemon and it means a sacrifice to get in there and fight them out and we had better go on farther where the competition is not so keen and find a better place.

Mr. Durbrow: Let me ask you this question please. How do you arrange with the California lemon shipper? Do you pay him a price here in California or do you account to him for the ultimate result of the sale of his product at the eastern destination.

160 Mr. Woodford: The check for a shipment of either oranges or lemons is drawn in favor of the shipper and is turned over to the shipper in full for what the fruit finally brings at the other end of the line and our expenses of conducting the business as the agent of these organizations are arranged for by assessments.

Mr. Durbrow: And charged up there. So that the shipper is concerned then not with the price f. o. b. California, but with the price that he obtains at the selling point?

Mr. Woodford: He is concerned with what the fruit actually brings in the market of consumption.

Mr. Durbrow: And it is your business to keep advised as to what prices are received for the different qualities of the fruit at these eastern destinations or markets?

Mr. Woodford: Our agents advise both us and the shippers at the same time; the copy of the account sales is sent to each.

Mr. Durbrow: What was the highest price that the California lemon sold for on Atlantic Seaboard territory during the last season?

Mr. Woodford: Well, I could not give you that definitely in dollars and cents, but I should say about $7.00 a box was the highest price.

161 Mr. Durbrow: $7.00 a box?

Mr. Woodford: For a stray box perhaps.

Mr. Durbrow: You are not positive that is the highest though, are you?

Mr. Woodford: About that.

Mr. Durbrow: What was the highest price that the lemons brought in the territory between the Allegheny mountains and the Mississippi River?

Mr. Woodford: I do not think we had any car that brought as much.

Mr. Durbrow: How about west of the River?

Mr. Woodford: I do not think we had any car that brought as much. The car I referred to was sold in Boston and I think it brought $7.65 for one brand, one mark, in the car, or something like that; but it was a stray car, and the only one of the kind, if I remember correctly.

Mr. Durbrow: How about the southeastern territory?

Mr. Woodford: Southeastern territory we do very little business in and have not tried much to get in there because the freight rate is against us and we only occasionally have any opportunity to do business down there.

Mr. Durbrow: Would it involve much trouble—I would
162 like very much to have the information and I think the Commission would also—to prepare a statement showing the maximum and minimum price received for California lemons in these three different territories for each month of the last season.

Mr. Woodford: Well, that would be quite a job——

Commissioner Prouty: I understood Mr. Woodford to say that he kept his accounts in such a way that at the present time he could show you the f. o. b. price received each month.

Mr. Woodford: We can give it easily by the month.

Commissioner Prouty: Now I think if we had the average price for each month it would be more helpful.

Mr. Durbrow: I was trying to reach that by getting the maximum and minimum.

Mr. J. H. Call: That would be misleading and would not be the average.

Commissioner Prouty: If you will indicate the points he will prepare a statement showing the average monthly price received at these general points, and I would be glad to have you include Denver among those points.

Mr. Durbrow: Mr. Norton I think has specified the points, that I think would be fairly representative.

Commissioner Prouty: Mr. Norton gave several points and
163 if he will make a list of the points he desires and hand it to Mr. Woodford he will prepare such statement.

Mr. Durbrow: We will prepare a list of points and ask to have the average price stated on oranges and lemons.

Commissioner Prouty: Yes, and make those representative points, and do not put the witness to any unnecessary trouble.

Mr. Durbrow: No, we will select a few leading points.

Mr. Woodford: Well, it doesn't make any difference how many you select. We can give it for a great number as well as for a small number, so far as our records go back.

Commissioner Prouty: I understand they must select a point where you have an agency?

Mr. Woodford: Yes, it must be that, or we could not give the record.

Mr. Durbrow: You do not seem to know very much about the quality of the California lemon, as to whether it has been improved or not; you were rather indefinite about that.

Mr. Woodford: I think the natural quality of the lemon as it comes from the trees varies in different years and has not changed greatly, if at all, since the beginning of the business; it is about the same kind of lemon as it always was.

Mr. Durbrow: But the lemon which grows on the tree
164 you seem to think is about the same kind of fruit it has always been. I should suppose that it would be, but I want to ask you this: the California producers and growers by the improved methods of handling their crop which they have learned something about by experience and certainly something about by the investigations of these government experts—are they able after they take the raw fruit from the tree in the first instance to pack that fruit and put it on the market in a more attractive shape so that its qualities are improved over the lemon which was originally placed in the hands of the consumer several years ago?

Mr. Woodford: I can explain that best this way. When Mr. Powell, representing the government, came into this country, eight years ago I guess he came to see me as soon as he did anybody, and he started out with the idea fixed in his mind after an investigation that the lemon was being handled so well that the orange was the product or the fruit which needed attention; and so the attention of the government officials was given for some five years particularly to the orange industry, and with only casual attention to the lemon industry; and I myself am perhaps responsible for the Government beginning last season to turn its attention to the lemon industry as it had to the orange and they have only completed one year of
165 such particular attention and need to continue the investigation three or four years more to find a result as in the orange industry.

Mr. Norton: Here is a report by Professor Powell for 1907 on the lemons.

Mr. Woodford: I don't think it gives particular attention to the handling of the lemons.

Mr. Durbrow: It is devoted exclusively to the lemon.

Mr. Woodford: "The condition of the lemon industry in California" is his report. I am familiar with it.

Mr. Norton: Packing and handling in the packing house, temperature, climate, essentials in culture, pruning, fertilizer and the whole subject?

Mr. Woodford: I understand that, but it was not with the government force, Mr. Powell's force of six or eight investigators; they had not put time in on the lemon industry as they are now.

Commissioner Prouty: It is hardly worth while to spend any more time on that now.

Mr. Durbrow: The lemon growers have developed some labor saving facilities; they have improved on the facilities they had to pick the crop and pack it for market.

Mr. Woodford: I don't think so, in the way of saving
166 labor; it takes just about so much labor to handle the fruit. It takes about so much labor with one exception, they have washing machines to wash the lemons where they require washing.

Mr. Durbrow: They have carrying belts, don't they?

Mr. Woodford: Not for lemons.

Mr. Durbrow: You can go so far as to say that so far as the marketing of the fruit is concerned that the transportation facilities have improved; the claims are now less than they were formerly.

Mr. Woodford: I think claims are somewhat less.

Commissioner Prouty: There is some evidence which tends to show the exact amount of claims paid to this association for the last four or five years.

Mr. Durbrow: I would like to ask you a few questions very generally about the orange situation. What competition do the California orange growers meet in this country?

Mr. Woodford: Florida, Louisiana, Porto Rico and various other sections in smaller quantities.

Mr. Durbrow: In what territory do they meet the competition from Porto Rico and Cuba?

Mr. Woodford: Porto Rico and Cuba would be more particularly at New York.

167 Mr. Durbrow: Is that much of a factor in the orange industry?

Mr. Woodford: Porto Rico is.

Mr. Durbrow: It is?

Mr. Woodford: Yes, the fruit comes in free.

Mr. Durbrow: How about Louisiana? That is about one thousand cars, I understand.

Mr. Woodford: Louisiana production has increased some three hundred thousand boxes this last season, and according as they load cars, about one thousand cars or very close to it.

Mr. Durbrow: Can you define any territory where you practically control the situation so far as oranges are concerned as you do the lemon industry?

Mr. Woodford: Florida oranges come as far west as Denver and their competition in Denver is pretty severe on Florida oranges, and Louisiana oranges in Iowa.

Mr. Durbrow: And you meet the competition in the territory in the vicinity of New York also?

Mr. Woodford: It is greater over there.

Mr. Durbrow: How is the price of oranges fixed at these different points?

Mr. Woodford: Well, it is fixed by competition, supply and demand.

168 Mr. Durbrow: You speak about the refrigeration and pre-cooling of fruit. This pre-cooling proposition is practically new, it is an innovation and has not been thoroughly tested and tried, has it?

Mr. Woodford: We have made a pretty thorough test of it in the last few seasons in a limited way, several hundred cars.

Mr. Durbrow: Do you ship any cars clear through to the East pre-cooled without ice?

Mr. Woodford: Yes, sir.

Mr. Durbrow: How many?

Mr. Woodford: I could not say.

Commissioner Prouty: When you say without ice, you mean without ice en route?

Mr. Woodford: Without any ice in transit.

Mr. Durbrow: I mean without any ice at all.

Mr. Woodford: No.

Commissioner Prouty: I understand in pre-cooling the fruit is cooled and the car is iced, so that the car is iced and cooled.

Mr. Woodford: Yes, sir.

Commissioner Prouty: And goes through without re-icing.

Mr. Durbrow: But I understand there has been some con-
169 tention which has been brought to my attention before this proceeding, where the shippers wanted to pre-cool and ship through to destination without any ice, and I wanted to learn whether that had been accomplished at this time.

Mr. Woodford: I think some few shipments have been made that way, but I do not think that is a live question; they might do something of that kind.

Mr. Durbrow: I wanted it removed from the consideration here is the reason I asked the question.

Mr. Woodford: But anybody can do it and there is nothing to interfere with his doing it, because it would be a ventilated shipment and there would be no restrictions put upon it by the carrier.

Mr. Durbrow: So you were speaking a while ago of shipments pre-cooled and iced before shipment?

Mr. Woodford: Without any icing in transit.

Mr. Durbrow: You were talking about cars with collapsible bulkheads?

Mr. Woodford: Bunkers.

Mr. Durbrow: Well bulkheads or bunkers.

Mr. Woodford: I guess one is as good as the other.

Mr. Durbrow: I wanted to ask you if you had made any
170 shipments in cars with collapsible bunkers?

Mr. Woodford: Yes, lots of them.

Mr. Durbrow: How many?

Mr. Woodford: I presume we have shipped several hundred cars that way, more than one hundred anyway.

Mr. Durbrow: I would like to ask you what has been the effect of shipping cars in that manner?

Mr. Woodford: We have not had any complaint on any cars so far to my knowledge.

Commissioner Prouty: What is the length of those cars?

Mr. Durbrow: They are a forty foot car.

Commissioner Prouty: They are longer on the outside than the ordinary car?

Mr. Durbrow: No, they are the same dimensions as the other cars.

with the exception there is 17 per cent cubical capacity saved by collapsing these bulkheads.

I want to ask you when shipments move through under ventilation if it is not very often the fact that in the course of transit it becomes necessary to refrigerate that car because of some climatic condition?

Mr. Woodford: No, sir.

Mr. Durbrow: You are sure about that?

171 Mr. Woodford: It used to be the case that shippers would for instance bill a car to Albuquerque or Las Vegas or some point on the Santa Fe and the same on the other lines, under ventilation, with instructions to ice at that point, but we found out that method of handling the business was like trying to resurrect a dead man; that if anything was gone wrong with the shipment, it had already transpired in the desert before it got over that far.

Mr. Durbrow: Do I understand the interests you represent are willing to have their ventilated shipments moved through with these bunkheads collapsed?

Mr. Woodford: We are willing to fill the space provided by the carrier, six boxes wide and two high, as long as he wants to make them; he can make the car as long as he pleases.

Mr. Durbrow: What about loading the boxes higher on pre cooled shipments?

Mr. Woodford: On pre-cooled shipments we are willing to load the car seven boxes wide instead of six, which would increase the loading capacity by one-sixth, and we think that that heavy loading can be extended further, but we are not sure. We are sure about the first feature, so that by a combination of these two propositions, the carrier would get seventy-two boxes extra in the ventilated

172 car by filling the space occupied by the ice tanks and in a pre-cooled ventilated shipment properly pre-cooled, he would get this increase in the load, the load increased by a sixth, so if all the cars were so equipped all the shipments would be a heavier minimum.

Commissioner Prouty: Can the present bunker be transformed into a collapsible bunker?

Mr. Woodford: That is what they are doing now, fitting the new cars with collapsible bunkers and transforming the old ones.

Commissioner Prouty: Does anybody know the cost of transforming an old refrigerator car with the old bunker into a collapsible bunker?

Mr. Butler: It is impossible on account of the construction, as I understand it.

Mr. Woodford: Well, they are doing it.

Mr. Butler: Is it not impossible to take the old refrigerator and turn it into a collapsible bunker?

Mr. McClimans: Yes, without tearing the car to pieces.

Commissioner Prouty: Well, we will have some testimony on that.

Mr. Durbrow: How are the diversions handled, all through your office?

Mr. Woodford: Through my office; not all of them through my office; perhaps through our agents in the East.

Mr. Durbrow: But through the Exchange or through the representatives of the Exchange?

Mr. Woodford: Yes, sir.

Mr. Durbrow: So when a shipper wishes to have his car diverted he notifies you and you take it up with your eastern representative and arrange for the diversion of a particular car so as to reach a market where the prices may be higher.

Mr. Woodford: The shipper designates to us the point to which he wishes his car to be diverted, but my office handles the whole proposition as one transaction, in order to facilitate the business and handle it economically.

Mr. Durbrow: Do you know of your own knowledge how often cars are held in transit for diversion, what has been your experience?

Mr. Woodford: It varies, less now than formerly in my judgment.

Mr. Durbrow: Can you give us an approximation, about how long a car of oranges would be held, what is the average?

Mr. Woodford: It depends on market conditions; I could not give you the average without going into it, and that would take a length of time.

Mr. J. H. Call: There is a finding by the Commission on that in a former case.

Commissioner Prouty: Are those cars held by the railroad company for diversion under some arrangement with the shipper?

Mr. Woodford: In accordance with the tariff the car may be held forty-eight hours at a point en route, whether ultimate destination or while they are en route, for diversion to any other point, and they may be diverted as many times as the shipper desires.

Commissioner Prouty: Can they be held at more than one point for diversion in the same car?

Mr. Durbrow: Yes, sir; as many times as the shipper directs as long as the car is in one general direction.

Commissioner Prouty: Let me understand. Suppose the car was shipped to New York, when that car got to Denver and was going through Denver, could it be held forty-eight hours there and again forty-eight hours at the Missouri River and again forty-eight hours at Chicago and again forty-eight hours at Pittsburgh?

Mr. Durbrow: Yes, your Honor.

Mr. Norton: By billing it to Denver first——

Commissioner Prouty: No, not by billing it to Denver first. Suppose it were billed to New York.

Mr. J. H. Call: I suggest the witness might give some information on that.

Mr. Durbrow: If the car is billed to ultimate destination, for instance to New York, they could not hold it for diversion at any intermediate point for that length of time, but that is not the practice.

Commissioner Prouty: It might be billed to Denver, held for forty-eight hours there and then billed to the Missouri River and held for forty-eight hours there and then to Chicago and so on?

Mr. Durbrow: So long as the shipment is in one general direction; and there are cases where the car is back-hauled and diverted.

Mr. Woodford: That is not exactly the point, about unlimited diversions; they are unlimited west of Chicago, but east of Chicago the lines have their own rule as to diversions. For instance, on the New York, New Haven & Hartford they will not divert them at all, but only forward them at half of the local rate.

Commissioner Prouty: What is the usual shipping direction, where does your organization usually bill these cars?

176 Mr. Woodford: It bills them to all markets, not to any one market as Florida people do. They bill them to Washington and Cincinnati as markets, but we do not. We bill them through to destination or divert them on arrival, but not as frequently as formerly.

Mr. Durbrow: I was anxious to determine if I could how long the cars were usually held from your experience. I thought it might corroborate some testimony I expect to introduce.

Mr. Woodford: We generally get the money from a car, our fruit is sold for cash and we get the money on the average in about twenty-one or twenty-two days after shipment, which gives time for the car to reach the east and be sold and collect the money and get it back. That is an average proposition.

Mr. Durbrow: Can you tell me what percentage of the cars shipped by the Exchange or under its direction are diverted?

Mr. Woodford: I could not tell you.

Mr. Halstead: Just a few questions about this placing of orders. I understood you to say that the matter of orders were made direct to the subsidiary exchanges; is that correct? That is, the subsidiary exchange sold a car of fruit, we will say at Denver, and loaded the car and started it off and then notified you of the shipment?

177 Mr. Woodford: No, that is not correct.

Mr. Halsted: Please correct me on that.

Mr. Woodford: The correct method is this: Our Denver agent would get an order for a car of a certain brand of fruit shipped by one of our constituents and would wire that order to my office here and my office would immediately take the matter up with the shipper of that particular brand and see if he was willing to accept the order at the price or without a price; we do business both ways; and in case the shipper so determined we would wire the agent that the shipment was accepted and then the shipper goes ahead and makes his shipment and notifies us when it is made.

Mr. Halsted: Then there is a certain amount of competition between the different members of the Exchange in the different markets?

Mr. Woodford: There is all kinds of competition.

Mr. Halsted: Well, there is competition of that character is there not?

Mr. Woodford: Yes, sir; they are all after business.

Mr. Halsted: One exchange would endeavor to make a sale, we will say in this preferred district west of the Mississippi as against

another exchange who wants to enter that same field; isn't
178 that true?

Mr. Woodford: That is true, but the practice of our people among themselves is to give the trade the preference, that is, if a customer in Denver asks for a certain brand of fruit the shipper of that fruit must have the chance to take that order.

Mr. Halsted: Suppose he does not want it, what is done then?

Mr. Woodford: Then it becomes an open proposition.

Mr. Halsted: Who apportions that?

Mr. Woodford: It is not apportioned.

Mr. Halsted: To whom is it given, what exchange takes the order?

Mr. Woodford: You mean the order that is not designated? The orders come designated.

Mr. Halsted: State this concrete case: A man in Denver telegraphs or places an order with your agent that he wants a car of—I do not know your different brands, but we will say——

Mr. Woodford: Quail brand.

Mr. Halsted: Yes. Now then you confer with the Exchange which packs that brand and that exchange has not any lemons, we will say, and does not want to fill the order. Now then not being able to fill the order, what becomes of it?

179 Mr. Woodford: We will say that so-and-so and so-and-so, two or three or four different persons could fill the order, is that satisfactory? And they will come back designating one of those and we will take it up with the shipper.

Mr. Halsted: So it is referred back to the purchaser as to what brand he prefers in lieu of the one he first designated?

Mr. Woodford: We are virtually a middle man making the arrangement between the shipper and the customer, bringing the two together.

Mr. Halsted: Then there is competition between the different exchanges?

Mr. Woodford: There certainly is, every one of them is trying to build up business in the preferred territory.

Mr. Halsted: Who determines or what determines when a carload of lemons shall go out of this preferred district into the second district or into the third district?

Mr. Woodford: When it cannot be sold in the first.

Mr. Halsted: Who diverts that, the parent Exchange, your organization, or the subsidiary exchange that ships the car?

180 Mr. Woodford: We all have the same information, that is, the parent exchange and the subsidiary exchanges. We give them copies of every wire that is received on the proposition and we confer with them and take their instructions as to what to do with that car. If we have a car in Omaha for instance that cannot be sold we say to the shipper "We do not think that can be sold." Maybe we are wrong but we say we do not think it can be sold. He says "I will take chances on it, I will wait a day or send it to Chicago." He determines what he will do.

Mr. Halsted: Your exchange, the parent exchange, cannot arbi-

trarily send that car for instance to Chicago or to Boston against the wishes of the subsidiary exchange?

Mr. Woodford: No, sir.

Mr. Halsted: It has got to be determined by that Exchange?

Mr. Woodford: By the shipper.

Mr. Halsted: Now then you do not know how the receipts for those cars are apportioned among the different members of the exchange, do you, yourself? Do you have anything to do with that?

Mr. Woodford: We do not have anything to do with it. I know in a general way what is done, but my office has nothing to do with it.

Mr. Halsted: In a general way, the different growers who
181 make up the local exchange pool their fruit?

Mr. Woodford: In some cases they do and in some cases they do not. In some cases each grower gets the money that his particular fruit brings size for size, and in other cases it is pooled crate for crate; there are all kinds of practices.

Mr. Halsted: We will say, in the last instance you give, we will say the pool extends over a period of three months.

Mr. Woodford: And sometimes they extend for a whole season on navel oranges or ten days or two months or a month. It is a matter of local regulation, each organization determines for itself what it will do or what its stockholders will do.

Mr. Halsted: We will say they determine to pool for three months, then the average price for each grade of lemons obtaining during that pool is apportioned among the various members of the Exchange.

Mr. Woodford: If that is their custom, on a young basis.

Mr. Halsted: And it does not make any difference to the individual grower whether his car of lemons is sold in Denver or in New York, he gets the average price?

Mr. Woodford: No difference under those conditions.

Mr. Halsted: He gets the average price?

182 Mr. Woodford: Under those conditions.

Mr. Norton: Will there be some other witness than Mr. Woodford who understands this pre-cooling matter better than he does?

Mr. Call: Yes.

Mr. Norton: Then I will not inquire of him. I will ask one question. In these cars which were pre-cooled and pre-iced under your experiment, how many of them were diverted in transit?

Mr. Woodford: I could not tell you that, but I do not think there was anything extraordinary about the handling of them, out of the ordinary.

Mr. Norton: You think that a car pre-cooled and pre-iced might be diverted four or five or six times in transit?

Mr. Woodford: I doubt it, in hot weather.

Mr. Norton: The other cars are diverted that number of times?

Mr. Woodford: Very few of them. Some of them, occasionally one.

Mr. Norton: Can you tell the number of cars you have pre-cooled and pre-iced?

Mr. Woodford: I could not give it exactly, but for the last two or three seasons one, two or three hundred a year, something like that; it is quite a block.

183 Mr. Norton: You are not prepared to furnish pre-icing and pre-cooling to all the growers in your exchange, are you?

Mr. Woodford: The growers are prepared in several instances and are just waiting a ruling to put in this pre-cooling for themselves; they are prepared to do it. The growers do it, we do not do it, except in the case here at Los Angeles.

Mr. Norton: What is the opinion about having these pre-cooling plants constructed for the growers, are they in favor of that generally, or do you know?

Mr. Woodford: I think some ten or a dozen of our various orange organizations are prepared to go right ahead with it now.

Mr. Norton: How many are opposed to it?

Mr. Woodford: Well, among our people I do not know of any.

Mr. Norton: I want to ask you if you please, to furnish this information; a tabulation showing what percentage of the citrus crop of 1900-1901, was handled by the California Fruit Growers Exchange, showing the net money which your Exchange turned over for distribution among the growers?

Commissioner Prouty: Can you do that, 1901?

Mr. Woodford: I think we can approximately.

Mr. Norton: And each year from that time down to the present time?

184 Mr. Call: I do not think it was kept separate at that time.

Mr. Woodford: Do you mean lemons and oranges separately?

Mr. Norton: If you can, separately where you can and jointly where you cannot.

Mr. Woodford: Let me state how these records were kept.

Mr. Norton: We will leave that to you, to show it separately where you can and jointly where you cannot separate it.

Commissioner Prouty: You have stated you could show for the last two or three years separately and otherwise you could not. Now show them separately where you can and where you cannot, show them jointly.

Mr. Norton: The amount your organization handled, the number of boxes, the net amount handed over to the growers.

Mr. Woodford: That would be the f. o. b. prices, because we turn it all over.

Mr. Norton: And the percentage of increase or decrease of the shipments over the previous year and the percentage of increase or decrease of the revenue delivered to the shippers.

Mr. Woodford: You will make a written request of these matters so I will know what to do? All of these matters you have mentioned.

Mr. Norton: Very well, that is all.

185 Mr. Durbrow: I want to ask you if you recall meeting Mr. J. C. Stubbs, the Traffic Director of the Southern Pacific

Company and Mr. T. A. Graham, the Assistant General Freight and Passenger Agent of the Southern Pacific Company situated at Los Angeles in the month of February, 1908, the meeting having taken place at your office?

Mr. Woodford: I remember Mr. Stubbs coming into my office a year or two ago, but I could not tell about the month of February nor I could not tell about whether Mr. Graham was with him: I presume he was.

Mr. Durbrow: This letter may serve to refresh your memory. Will you look at it (handing paper)?

Mr. Woodford: This is my letter all right.

Mr. Durbrow: You remember it then?

Mr. Woodford: I do not remember the circular or I do not remember the transaction.

Mr. Durbrow: You remember the conversation you had with those two gentlemen, Mr. Woodford?

Mr. Woodford: I do not, nor I do not remember the contents of the circular.

Mr. Durbrow: Then I want to ask you if you recall Mr. Stubbs' statement to you at that time that in his opinion the time had
186 arrived to lower the lemon rate and that it was no longer necessary to afford the lemon growers this winter relief rate or the relief rate which had been made effective for the entire year?

Mr. Woodford: I do not remember.

Mr. Durbrow: That is all.

Mr. Norton: I would like to correct a statement in answer to Commissioner Lane's question about that minimu-, 32,000 pounds. They tell me that is the maximum for the $30.00 rate. I stated to you it was the minimum. 32,000 pounds is the maximum.

Mr. Woodford: I think maximum would be right. You could not put in any more without a higher charge.

Commissioner Prouty: You say you have an agency in London. Do you sell many oranges in London, Mr. Woodford?

Mr. Woodford: Not many, less than 100 cars annually, large sized fruit. That is hard to sell on this side.

Mr. Norton: Do you sell on the Continent of Europe?

Mr. Woodford: It all passes through the London office. When you mention London it would cover all the European Business.

187 Redirect examination:

Mr. A. F. Call: Did you ever hear any of the representatives of the carriers denominate the all-year round lemon rate, after it was established as an emergency rate or winter relief rate?

Mr. Woodford: Not after it was changed. It was called the all year round rate: that is the winter relief rate was changed to an all year round rate. Those are the words used to describe it.

Mr. Norton: By whom?

Mr. Woodford: By all of us.

Mr. Call: And by the tariffs?

Mr. Woodford: I don't remember about the tariffs. They would speak for themselves.

Mr. Call: It was carried the same as any other rate, without any description.

Mr. Woodford: I think with no description whatever in the tariff, no particular description.

Mr. Call: You spoke about the converting of old refrigerator cars into the new collapsible bunker style. Do you know of any such cars being converted?

Mr. Woodford: It was so reported to me; I have taken it for an established fact, of its being done.

188 Mr. Call: In this preferred territory, in the marketing of lemons in the Rocky Mountain region is there competition between the California growers?

Mr. Woodford: There certainly is.

Mr. Call: That is the market that they are all after?

Mr. Woodford: That is the market they all want.

Mr. Call: And in that market, who determines the fruit that is to be sold, the seller or the buyer?

Mr. Woodford: The buyer. That territory wants the best fruit.

Mr. Call: Then the man that cannot sell in that territory has no option about it, but to go on, has he?

Mr. Woodford: They sometimes are willing to take a less price and try to force themselves in, but it is pretty hard to do against the wishes of the trade.

Mr. Norton: What territory?

Mr. Woodford: Preferred territory, west of the Mississippi River.

Mr. Norton: That wants the best fruit?

Mr. Woodford: It takes the best fruit.

Mr. Call: That takes the best fruit and why does it take the best fruit?

189 Mr. Woodford: Well, the centers of distribution are not as large and it takes longer to dispose of a carload of fruit and they are in the habit of storing it that long after purchase.

Mr. Call: And when they pay the price they want the fruit, is that it?

Mr. Woodford: They want good fruit that will keep.

Mr. Call: Because they pay the highest price?

Mr. Woodford: Yes, sir; because they pay the highest price. Around Omaha they pay the highest price generally for lemons in the whole country.

Mr. Call: And they have the choice of fruits and cars?

Mr. Woodford: They have the pick of the business.

Mr. Call: Then the man who cannot sell in that territory goes on and tries the next lowest market, does he?

Mr. Woodford: Every shipper takes the next best until he finally gets off at the lowest price if he has to.

Mr. Call: The jumping off place at the Atlantic Ocean?

Mr. Woodford: Yes.

Commissioner Prouty: How many members of your association grow lemons?

Mr. Woodford: That would be pretty hard to state; I presume we have five thousand orange and lemon growers connected with us and I should say one-sixth of them perhaps are lemon
190 growers.

Commissioner Prouty: You mean you have five thousand different members of your association?

Mr. Woodford: Different members of these associations.

Commissioner Prouty: So your association is not composed entirely of different exchanges or different members?

Mr. Woodford: Well, these exchanges are built up of different members.

Commissioner Prouty: I understood you to say today that you dealt with the Exchange and not with the individual?

Mr. Woodford: We do.

Commissioner Prouty: And now I ask you how many of these Exchanges are in your organization?

Mr. Woodford: We deal with fourteen and they are composed of different members.

Commissioner Prouty: Do all those exchanges market lemons?

Mr. Woodford: Not all of them.

Commissioner Prouty: How many of them market lemons?

Mr. Woodford: About half of them market lemons in any considerable quantity. I said not all of them; it may be that every one would ship sometimes a few boxes, but not to be called a lemon shipper.

Commissioner Prouty: What portion of all the lemons
191 grown in California did you say your Exchange marketed?

Mr. Woodford: We marketed last season about 62 per cent.

Commissioner Prouty: Are the balance marketed through any rival exchange or by shippers?

Mr. Woodford: Different shippers and growers; the fruit business of California, all of it, lemons and oranges, is divided about like this, in the marketing of it: we market 58 or 59 per cent of both fruits, oranges and lemons, or did last year; and about 20 or 25 per cent of the entire crop, making 80 per cent in all is marketed by other growers, organizations and large growers, which have no connection with us; and the balance, something less than 20 per cent, is marketed by speculators or commercial shippers, who buy fruit.

Commissioner Prouty: Is that 20 per cent usually bought on the tree?

Mr. Woodford: There is not very much of it bought any more.

Commissioner Prouty: Is it produced mainly by small growers or by large growers?

Mr. Woodford: I do not think that it is anything out of the ordinary in that; average growers, both large and small.

Commissioner Prouty: Do most of those growers ship a carload at a time?

192 Mr. Woodford: They could if they wished. Most any grower can do that.

Commissioner Prouty: Is that 20 per cent bought in California or is it shipped to some Commission man away from California?

Mr. Woodford: It is generally shipped by the speculator or packer at this end of the line, either on his own purchase or as a middle man for the grower.

Commissioner Prouty: Do the agents who finally sell the fruit in the East send traveling men through this country to buy up the fruit?

Mr. Woodford: Very few of them. We differ from Florida in that respect.

Commissioner Prouty: It is mostly handled here by people who live in California?

Mr. Woodford: Yes, sir; either by the growers themselves for some 80 per cent of it or by some local companies.

Commissioner Prouty: Are there packing companies who buy fruit and ship to the East?

Mr. Woodford: Yes, sir.

Commissioner Prouty: That are independent of your organization and that are independent of your rival association?

Mr. Woodford: Yes, sir.

193 Mr. Norton: About mixed carloads of lemons and oranges in western territory, how do the mixed cars compare with the straight carloads?

Mr. Woodford: How do you mean?

Mr. Norton: Mixed lemons and oranges?

Mr. Woodford: In what way? You ask, how do they compare.

Mr. Norton: How do they compare in number, are the mixed carloads more numerous than the straight carloads of lemons?

Mr. Woodford: No, sir.

Mr. Norton: About how do they compare?

Mr. Woodford: I should say that except in certain small markets there is hardly ever a mixed shipment.

Mr. Norton: Is there much of a mixture to any territory east of the Mississippi River or east of the Alleghenies?

Mr. Woodford: Not many mixed shipments over in that country, very seldom.

Mr. Norton: But your mixtures are common in Canada, I understand?

Mr. Woodford: And the mining regions of this country and smaller markets.

(Witness excused.)

194 S. B. HAMPTON was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Call: Your full name is S. B. Hampton?

Mr. Hampton: S. B. Hampton.

Mr. Call: Where do you reside?

Mr. Hampton: Corona, California.

Mr. Call: Your occupation?

Mr. Hampton: Manager of the Corona Lemon Company.

Mr. Call: Are you engaged in producing, packing, shipping and marketing of lemons?

Mr. Hampton: Yes, sir.

Mr. Call: How long have you been so engaged here in California?

Mr. Hampton: Well, exclusively for 12 years.

Mr. Call: What points?

Mr. Hampton: Well, at Corona and Whittier and Coanga districts and Hollywood.

Mr. Call: The Corona and Whittier districts are among the larger lemon producing districts in the state?

Mr. Hampton: Yes, sir; I guess the two are about as large as

195 any.

Mr. Call: And what has been the extent of your production, speaking approximately, during these years?

Mr. Hampton: Oh, from 150 to 300 cars per year.

Mr. Call: What is the extent of the lemon acreage under your charge, for instance since you have been in Corona?

Mr. Hampton: About 200 to 300 acres; more at times, 350.

Mr. Call: Your operations include the care of the groves and purchase of supplies and producing fruit as well as packing and selling?

Mr. Hampton: All branches of the work.

Mr. Call: So your work during these twelve years has included all the work from the producing of the lemon to the marketing of it?

Mr. Hampton: Not all the time, but a good part of the time it has.

Mr. Call: In addition to your own experience, have you been generally acquainted in the lemon districts in California with regard to the producing cost and methods of handling?

Mr. Hampton: I have visited, I guess, all the lemon districts almost every year, sometimes several times a year, and kept posted on the general business in order to handle our own successfully.

196 Mr. Call: And during the last few weeks have you made special investigation and compilations with a view of determining the average cost of each of these different processes, in the matter of producing lemons?

Mr. Hampton: I have, yes, sir; during the last two weeks I have spent most of the time in gathering data for that purpose.

Mr. Call: Will you explain to the Commission the processes; take the lemon through, say from the time it leaves the tree, and how it is handled; first, how many times a year do you go over your trees to pick the fruit?

Mr. Hampton: Ten to twelve times.

Mr. Call: And how do you determine when it should be picked?

Mr. Hampton: As to size, largely. Of course, when the trees are very full of fruit that is yellowing, we pick it a little oftener than other times, but usually we pick it as the market demands.

Mr. Call: The picker carries a ring, does he, of a certain size, and measures each fruit he picks?

Mr. Hampton: Yes, sir.

Mr. Call: And you go over the trees ten or twelve times a year?

Mr. Hampton: Not less than ten.

197 Commissioner Prouty: How do you pay the pickers, by the box or day?

Mr. Hampton: By the day.

Commissioner Prouty: About what does it cost per box to pick them?

Mr. Hampton: That varies a little by different methods; different people have a different way of doing it?

Mr. Call: Give an average.

Mr. Hampton: I will have to look at my figures to give the average.

Commissioner Prouty: If you are going to give those figures you might wait.

Mr. Call: You might give them now while you are on the subject.

Mr. Hampton: I have the figures from some 3000 acres.

Mr. Call: Give the figures while you are on the subject.

Mr. Hampton: The average cost of picking and hauling in one item, picking and delivering to the packinghouse, is 26 cents a box, and a very close fraction, on about 3000 acres that I have the figures, covering the actual figures from the books.

Mr. Norton: Is that a field box?

Mr. Hampton: That is a packed box.

198 Mr. Call: When you get the fruit to your house, what is your first process, now, in common vogue and custom?

Mr. Hampton: Washing is the first process of handling.

Mr. Call: That is done now by machinery, is it not?

Mr. Hampton: Done by machine altogether.

Mr. Call: And after the lemons are washed, what is the next step?

Mr. Hampton: Well, in the washing process we grade them for quality or color, as some term it, in order to get out the proper grade and quality for storing.

Mr. Call: What is the difference and how do you determine the difference in quality, by the color?

Mr. Hampton: Very largely, yes, sir. A green lemon is the best keeper, and firm stock, and the light color not as good in quality, and the very yellow stock must be handled and marketed very soon in order to keep the loss from being too heavy by decay.

Mr. Call: Then take it, for instance at this time of the year, what is the practice with regard to the disposition of the various grades of fruit as a rule?

Mr. Hampton: At this time of the year?

Mr. Call: At this time of the year.

199 Mr. Hampton: There are exceptions, but at this time of the year usually all the fruit that is good firm stock is held until market conditions improve.

Mr. Call: This is usually the season of low prices, is it?

Mr. Hampton: Usually, yes, March and April.

Mr. Call: The late winter and spring are usually the season of low prices?

Mr. Hampton: Yes.

Mr. Call: And at that time the best of the fruit is selected out and cured and preserved and held for the summer months, isn't it?

Mr. Hampton: Yes.

Mr. Call: And the poorer fruit is shipped immediately, or soon after picking?

Mr. Hampton: Soon after, as soon as it is in proper condition.

Mr. Call: And sold regardless of the market?

Mr. Hampton: Yes.

Mr. Call: It is sold regardless of market conditions usually, is it?

Mr. Hampton: Yes.

Mr. Call: Now, in the summertime, during the heated sea-
200 son, how does the method differ in handling the fruit?

Mr. Hampton: Well, it does not differ, without market conditions are different, but as a rule at that time the market is such that we can ship it out in a short time, as soon as it is in condition.

Commissioner Prouty: Do you ship a lemon when it is green in color?

Mr. Hampton: No.

Commissioner Prouty: So, if you pick a lemon green you will retain it until it turns yellow?

Mr. Hampton: Yes, sir; under natural conditions it would take one month before it would be in condition to ship, at least one month.

Mr. Call: But you hasten the maturing of the fruit during the summer season and fall, do you not?

Mr. Hampton: During the late summer and fall we color our green fruit artificially in order to get it on the market in the shortest time.

Commissioner Prouty: What do you mean by coloring it artificially?

Mr. Hampton: Sweat it, we call it, by steam.

Mr. Call: Putting it in a sweat room and turning on hot
201 steam for a period of four to five days, do you not?

Mr. Hampton: Yes, sir.

Mr. Hall: And that develops the color of the fruit?

Mr. Hampton: It takes out the green and bleaches it.

Mr. Call: It takes out the green and bleaches it to the color you see in the market?

Mr. Hampton: Yes.

Mr. Call: You do that in the season when good prices prevail?

Mr. Hampton: Yes.

Mr. Call: That is usually from, say July to November?

Mr. Hampton: July to November or the first of December.

Mr. Call: Then when you begin to pick the yellow fruit you usually allow it to go through the natural curing process in the curing room and tents, do you not?

Mr. Hampton: Usually after the first of December. Of course there might be exceptions.

Mr. Call: So that at different seasons of the year you try to handle the fruit in order to meet the market conditions and the conditions in which you find the fruit?

Mr. Hampton: Yes, sir.

Mr. Call: What is the average cost of packing house handling in California outside of the picking, after it reaches the packing
202 house and until it reaches the car?

Mr. Hampton: The average cost from the figures I have obtained is 57 cents a box.

Commissioner Lane: How much?

Mr. Hampton: 57 cents a box from the time it reaches the packing house until it is on board the car.

Commissioner Lane: Well, the testimony as to oranges given by Mr. Woodford was 37 cents?

Mr. Call: 30 cents.

Commissioner Lane: 37 cents; seven cents for selling and 30 cents for packing. What is the difference between the cost of selling and the cost of packing lemons and oranges, why should lemons cost more?

Mr. Hampton: The work in handling lemons is more than double the work in handling oranges through the packing house, for two or three reasons. First, we wash them, and it takes probably three or four cents for a packed box, and the grading as to quality, the expense of storing in the packing house and probably taking them down and resorting to eliminate the decays, and packing up again, and all this takes a great deal of expense in the curing process.

Mr. Call: And while the lemon is in the curing room, does
203 it require continual attention to keep the temperature uniform and the matter of moisture uniform?

Mr. Hampton: Yes, sir; there should be a record kept as to temperature and moisture conditions and ventilate the house at the time that will cool the fruit and dry it the least.

Mr. Call: You aim to preserve an even temperature?

Mr. Hampton: Even temperature and even moisture, just as important.

Mr. Call: That temperature is along 55 to 60 degrees?

Mr. Hampton: As low as you can keep it, the lower the better.

Commissioner Prouty: Do you resort to artificial cooling?

Mr. Hampton: No, not in storage. There is no artificial cooling except in that way, by ventilating it at night and closing it in the morning, it holds the average temperature very much lower than though it is left in a natural condition.

Mr. Call: The night temperature in California is low as compared with the day?

Mr. Hampton: Yes, sir.

Mr. Call: And by opening up your house nights and filling it with cold air and getting your lemons cool and then closing it up during the day, you can hold that temperature down?

Mr. Hampton: Very even temperature, it will not vary
204 more than three to five degrees very often in the 24 hours.

Mr. Call: Your houses are specially constructed for that purpose, are they not?

Mr. Hampton: Yes, sir.

Mr. Call: In addition to that, your lemons are boxed and put in closed tents, in most localities?

Mr. Hampton: Most localities have tents as well as a great many have a house protection outside.

Mr. Call: Which holds the temperature down?

Mr. Hampton: It holds it low, and in warm districts, we have double walls.

Mr. Call: In packing lemons you have about twice the number in a box that you have with oranges?

Mr. Hampton: Yes, rather more than that.

Mr. Call: And each is wrapped separately?

Mr. Hampton: Yes, sir.

Mr. Call: The cost of packing them is double that of oranges, is it not?

Mr. Hampton: Rather more than double, I think.

Mr. Call: So the actual packing house expense which is largely labor, is about double that of oranges?

205 Mr. Hampton: It is more than double, the packing alone is more than double, without the expense of storing and washing.

Commissioner Lane: And you get less per lemon than you do per orange?

Mr. Hampton: I beg pardon?

Commissioner Lane: Your selling price f. o. b. is less per lemon than per orange?

Mr. Call: Per individual orange?

Commissioner Lane: Yes.

Mr. Hampton: Very much less, yes, sir.

Commissioner Lane: That is two-thirds of a cent on lemons and about one cent on oranges?

Mr. Hampton: Well, hardly two-thirds, they will not average 300 in size.

Mr. Call: They will average about 330.

Commissioner Lane: Mr. Woodford gave 300 to 360, and the average would be about 330.

Mr. Call: The price is $2, a little less than two-thirds of a cent apiece on lemons. Now, in producing the fruit, what is necessary first in the production of a grove?

Mr. Hampton: Well, there are so many things enter into 206 the case, but good farming is about the first thing, and——

Mr. Call: How many years does it take to produce a lemon grove before you get it into what you consider means in condition to produce fruit in commercial quantities?

Mr. Hampton: Six to eight years.

Mr. Call: What is the average cost, considering and including the land and water and care and cultivation up to the time that the grove is ready to produce, what is the average cost per acre in California?

Mr. Hampton: Well, I don't know that I am prepared to answer that only in a general way; it varies in different localities very much, both as to the cost of land, and also the cost of water; but to bring it to bearing was your question?

Mr. Call: Yes, to bring it to bearing.

Mr. Hampton: I should think it would vary from $800 to $1000, $700 to $1000.

Mr. Call: Per acre?

Mr. Hampton: Per acre.

Mr. Call: Well, in the carrying of a producing grove, what is necessary if the way of irrigation?

Mr. Hampton: Well, the grove in ordinary localities over this country must be irrigated about once a month.

207 Mr. Call: And in irrigating, do you prepare old furrows in advance every time?

Mr. Hampton: Yes, each time it must be furrowed out and the water run two or three days.

Mr. Call: And then your furrows filled?

Mr. Hampton: Furrows filled up, or broken, as they call it.

Mr. Call: And the ground cultivated?

Mr. Hampton: The ground cultivated every time.

Mr. Call: And usually both ways?

Mr. Hampton: Usually both ways.

Mr. Call: And that process you go through eight or nine times a year in the average lemon colony in California?

Mr. Hampton: Seven to ten times a year.

Mr. Call: Do your trees need fumigation to protect them from the scale and other pests?

Mr. Hampton: At least every two years.

Mr. Call: And some localities every year?

Mr. Hampton: Some localities every year, and sometimes twice a year.

Mr. Call: Throwing a tent over every tree and using cyanide gas?

208 Mr. Hampton: Yes.

Mr. Call: And do the trees need pruning once or twice a year?

Mr. Hampton: They need pruning, as a rule, twice a year; some districts only practice once a year, but the expense is pretty nearly the same, whether once or twice.

Mr. Call: They need fertilizing every year?

Mr. Hampton: Yes, twice a year.

Mr. Call: Will you state the average cost in California per year per acre of taking care of a lemon grove in bearing?

Mr. Hampton: As near as I have been able to determine from about 3000 acres that I have gone over and taken the figures from the books, where accounts are accurately kept, the average cost for all items, care, fertilization, fumigation and water cost and taxes, amount to $163.94. These figures are taken from groves where the acreage is large as a rule, although I have a number of smaller groves, and it is my opinion that the acreage in a large way is handled cheaper than the grower who owns a small orchard.

Mr. Norton: Is that $163.94 the average of——

Mr. Hampton: The average of 3000 acres.

Mr. Norton: The average of what, bringing it to bearing?

209 Mr. Hampton: No, the average cost each year per acre.

Mr. Norton: Of maintaining it after it comes into bearing?

Mr. Hampton: Of producing the lemons.

Commissioner Prouty: That does not include the cost of packing, or anything of that kind?

Mr. Hampton: No, the cost of producing the lemon on the tree.

Commissioner Prouty: How does the cost compare between lemons and oranges?

Mr. Hampton: Well, there is not very much difference except in the pruning and fumigation. The lemon tree seems to be of a nature that the scale pests thrive on it, and it has to be fumigated usually three times to an orange tree's twice, or possibly twice as often. But the care does not vary a great deal, although it does a little. The lemon tree branches and calls for more hand work under the tree, and that sort of thing.

Commissioner Lane: What is the average that you allow there for water?

Mr. Hampton: That varies from $15 to $30 for different districts, per acre.

210 Commissioner Prouty: And for fertilizer?

Mr. Hampton: Fertilizer varies, of course, the same; it runs from $25 to $75.

Commissioner Prouty: What do you use mostly for fertilizer?

Mr. Hampton: Well, largely commercial fertilizers, although there are——

Commissioner Prouty: Where are they manufactured, on the Coast?

Mr. Hampton: Well, the mixed fertilizers are mixed and manufactured here on the Coast, but a great many use the simples, as they call it, the straight articles, either bone or blood or tankage, as it comes from the slaughter houses east.

Mr. Call: And they use considerable quantities of nitrate of soda imported from Chile?

Mr. Hampton: Yes, sir.

Mr. Call: And guano from Peru and the Pacific Islands?

Mr. Hampton: Yes, sir.

Mr. Call: And Potash from Germany?

Mr. Hampton: Yes, sir.

Mr. Call: And they use the pumice phosphate that they import from Europe?

Mr. Hampton: Yes, sir.

211 Mr. Call: And products from nearly all the packing houses of the middle west?

Mr. Hampton: Yes, sir, they are used very largely.

Mr. Call: And pebble rock from Florida and Tennessee?

Mr. Hampton: Yes, sir.

Mr. Call: And the scale pests that they are required to fight, you might enumerate.

Mr. Hampton: Well, we have the black scale, the most common, the red scale, the purple scale, the white scale, the yellow scale, the cottony cushion scale, and there is one other.

Mr. Call: The mealey bug?

Mr. Hampton: The mealey bug, don't forget that.

Mr. Call: These pests, if not destroyed by fumigation, would soon destroy the trees or put them in a condition where they would not produce?

Mr. Hampton: I think they would soon be put in a condition where it would be impossible to get any profit from the tree or crop.

Mr. Call: I suppose in this investigation you found all kinds and conditions of orchards, from those that are extremely well cared for at a very high grade of expense and those that are only passably well taken care of.

212 Mr. Hampton: Yes, all conditions.

Mr. Call: And you have taken your averages by taking all into account, the good, bad and indifferent?

Mr. Hampton: Yes, all I could get actual figures from.

Mr. Call: Do you know the average production in packed boxes of the lemon groves of California per acre, annually?

Mr. Hampton: The average for the last three years is 97 boxes per acre, packed boxes, taking the shipments as given by the railroads, and taking the acreage as made up from the assessment rolls on bearing trees, which is no doubt correct.

Mr. Call: What percentage of your crop is marketed as first grade fruit, do you think, on the average?

Mr. Hampton: Well——

Mr. Call: You might state how your own groves grade, as a criterion.

Mr. Hampton: Well, our own grove probably will average 50 per cent in the last four or five years.

Mr. Call: First grade fruit?

Mr. Hampton: Yes.

Mr. Call: How much would be of the second grade fruit?

Mr. Hampton: About 40 per cent.

Mr. Call: 40 per cent of the whole?

Mr. Hampton: 40 per cent of the whole, and 10 per cent
213 of the third grade, and of course a certain amount that is unmarketable, culls.

Mr. Call: What changes have there been made in that last six or seven years in the methods of handling lemons there in the packing houses, that you know of?

Mr. Hampton: There are very few changes, except that more care is taken in handling, and in the development of a washing machine that makes the cost of washing less.

Mr. Call: How does the labor cost now compare with the labor cost of, say six years ago?

Mr. Hampton: I think it is higher, rather higher.

Mr. Call: And is the efficiency about the same?

Mr. Hampton: About the same.

Mr. Call: In the units of labor furnished?

Mr. Hampton: About the same.

Mr. Call: And the daily wage is higher than it was six years ago, is it?

Mr. Hampton: Well, it is a very little higher, and the work put

on the fruit is more than formerly, so that I think the general cost has increased a little.

Mr. Call: How is it about the work required in taking care of a grove as compared with former years?

214 Mr. Hampton: It is practically the same.

Mr. Call: Has the fumigation in recent years been more expensive than formerly?

Mr. Hampton: It is more expensive, but more effectice.

Mr. Call: More expensive and more effective. How is the fertilizer expense compared with former years?

Mr. Hampton: It is increasing as the trees grow older.

Mr. Call: The ground becomes more impoverished as it is cropped, and requires more replenishing?

Mr. Hampton: Yes, sir.

Commissioner Lane: Let me see if I understand your statement. It costs $163 an acre to take care of an acre during a year?

Mr. Hampton: Yes, sir.

Commissioner Lane: Provide water and fertilizer and the expenses you have named?

Mr. Hampton: Yes, sir.

Commissioner Lane: And you get an average of 97 boxes off an acre?

Mr. Hampton: Yes, the general average from all the acreage in California, for three years.

Mr. Norton: That includes the non-bearing acreage?

Mr. Hampton: No, it does not; the bearing acreage. The

215 non-bearing trees are not taken account of at all in the assessment rolls.

Commissioner Lane: 97 boxes to the acre, and selling at an average of a little over $2 a box, which was the statement made by Mr. Woodford, I take it you would have $194 or $195 gross off your lemons, and you would have to pay $163 or $164 for their care, leaving $30 or $31?

Mr. Halsted: And the packing and picking is extra, 84 cents.

Commissioner Lane: In addition?

Mr. Durbrow: Yes, your Honor.

Commissioner Lane: I was figuring out in my mind that possibly you had three per cent, upon the lowest estimate of the value of your land; so that according to your figures, including picking and packing, you would not get any profit, and would have to support yourself?

Mr. Hampton: Well, there are a good many that have not had any profit, just as in any other line of business.

Commissioner Lane: From these figures you have given, less than three per cent, aside altogether from management, for the return for the labor you put in in the management of your place—there is not three per cent net return upon the value of your product?

216 Mr. Hampton: That is right.

Mr. Call: And there is not that on the average.

Mr. Halstead: He has stated that the cost of picking, hauling and

packing averaged 83 cents, and of course, now, this cost of $163 was just for producing.

Commissioner Lane: I understand it does not include that, but I am eliminating the cost of picking, packing and taking the *the* elements he has just mentioned, which run up to a figure of $163.94, and then the amount that he gets, and it leaves him about $30, and with that $30 he has to pay for the packing and picking and management of the plant, and make interest on his money.

Mr. Call: Well, you produce the report of your director, Mr. Cheney, and he will show you he has paid $55,000 deficit to take care of his grove, and I have his statement in my office.

Commissioner Lane: And notwithstanding that fact, new lemon orchards are being put in.

Mr. Durbrow: And being sold for $1000 an acre.

Mr. Call: Some of the growers have made large dividends; some groves have done well, and some have made good money and some have made large losses, and there is no way of giving accurate
217 information to you except giving to you the average of good, bad and indifferent as it appears from the records we have been able to get, and it shows that the business is done on the average at a loss. And we can cite you to 100 cases where they are putting up a deficit every year, and to 50 cases where they are making good interest on their investment, and there are a lot of them who are just maintaining their groves along by eking out an existence, and taking care of other people's groves part of the time, and taking care of their own the balance of the time. It depends a lot on who gets the Denver market and who gets the production.

Commissioner Lane: Well, we need more tariff.

Mr. Hampton: Sure.

Mr. Call: What we need is a law to secure fair railroad transportation.

Mr. Durbrow: I do not think it lies in the mouth of the representative of these shippers to talk about a fair railroad rate, because it is because of the railroads reducing the rate to an extraordinarily low figure that this industry has thrived to this great extent.

Commissioner Prouty: We will argue the case at some future time? Have you any further questions?

218 Mr. Call: Do you know in regard to the development of the industry since the $1 took effect?

Mr. Hampton: Well, the yield has increased very much, and also new planting is being done quite extensively. The shipments in 1907 were 1,097,000 boxes, in 1908, 1,585,000 boxes, and in 1909, 2,000,000 boxes, and in the past four years there has been upwards of 3000 acres of new orchards planted.

Mr. Call: What was the condition of the industry at the time the $1 rate took effect?

Mr. Hampton: Well, they were budded over as fast as they could, the acreage from 1902 to 1905 decreased 40 per cent.

Mr. Call: How many thousand acres were destroyed or budded over during those two years?

Mr. Hampton: Nearly 6000 acres.

Mr. Halsted: What year was that?

Mr. Hampton: 1902 to 1905.
Mr. Call: I thought you said 1902 to 1904.
Mr. Hampton: 1902, 1903, 1904, three years.
Mr. Call: And 6000 acres that you say cost our growers from $700 to $1000 an acre to produce?
Mr. Hampton: Yes, sir.
Mr. Call: Budded over because they could not make the
219 business pay?
Mr. Norton: Is that what he said?
Mr. Hampton: Yes. I know of a number of cases where they have since been rebudded to lemons, the same orchards.
Mr. Call: What is the average California wage for taking care of lemon groves and packing house work?
Mr. Hampton: $2 a day. I don't know whether that would be an average, either, but that is about the lowest. A great many branches of the work pay more.
Mr. Call: And a few pay less?
Mr. Hampton: Yes, a few pay a little less.
Commissioner Prouty: You say you have charge of 350 acres or 300 acres of lemon trees?
Mr. Hampton: Yes.
Commissioner Prouty: What do you mean by charge of them? Are you the owner of any of the orchards?
Mr. Hampton: No, we have a company and I am Manager of the company, and have full charge of the care of the groves and packing house and all branches of the work.
Commissioner Prouty: So that you actually till groves?
Mr. Hampton: I have charge of everything in connection with it.
220 Commissioner Prouty: Are those 300 acres in bearing?
Mr. Hampton: Yes, nearly all.
Commissioner Prouty: What do those groves yield per acre, how many boxes?
Mr. Hampton: Well, it varies a great deal. It runs from—well, as an example, it almost doubled from the year before last, last year, and four years ago, I have not the exact figures, but four years ago I think we had about 60 carloads from 135 or 140 acres that were in bearing at that time that I kept separate and know the exact figures from.
Commissioner Prouty: How do you reach this average yield of 97 boxes per acre?
Mr. Hampton: That is taken from the number of boxes shipped out of California, the number of acres of bearing trees as taken from the statement as made from the State Board of Equalization on bearing trees.
Commissioner Prouty: So that you take the total number of boxes shipped, and the number of acres of bearing trees, as determined by the State Board of Equalization?
Mr. Hampton: Yes.
Commissioner Prouty: And arrive at your result in that way?

221 Mr. Hampton: Yes, sir.

Commissioner Prouty: You have no personal knowledge?

Mr. Hampton: No further than that.

Commissioner Prouty: What do you say as an orange grower, is that a fair average? Would you be satisfied as an orange grower to obtain 97 boxes to the acre?

Mr. Hampton: No.

Commissioner Prouty: What would satisfy you as a fair yield?

Mr. Hampton: I do not think I would be satisfied. I would want all I could get.

Mr. Call: He has imbibed the railroad spirit, if your Honor please.

Mr. Hampton: It is a question largely of management and care and intelligent cultivation in every branch of the work to get a full crop.

Commissioner Prouty: Well, what do you call a full crop?

Mr. Hampton: A car to the acre I call a full crop.

Commissioner Prouty: That would be 468 boxes?

Mr. Hampton: No, 312 boxes. And there are very few—there are none that have averaged that for any number of years. They might for one year. Last year there were a good many

222 orchards that would produce that.

Mr. Call: Last year was a phenomenal year all over California in production?

Mr. Hampton: Yes.

Mr. Call: Never saw anything like it before?

Mr. Hampton: No.

Mr. Call: And this year it has fallen back to normal?

Mr. Hampton: Well, nearly normal, I think.

Mr. Call: The production of lemon groves of course varies with the location, soil and culture and judgment in the management of the grove, age of the trees and size of the trees and all those elements that rarely combine in one property; is not that a fact?

Mr. Hampton: That is true.

Mr. Call: That is, there are a few well known, very successful lemon groves in California; that is true, is it not?

Mr. Hampton: Yes.

Mr. Call: And a great number of groves which, either because of a want of climatic condition, or soil or culture or judgment or management or money or facilities, have not done so well?

223 Mr. Hampton: That is true.

Mr. Call: So that, taking any colony together, you could not in any colony see or cite a production where there would be even a half a car to the acre in even the best of the colonies?

Mr. Hampton: No, not one year with another.

Mr. Call: There is not the best colony in California which can show that return?

Mr. Hampton: No.

Mr. Call: But individual groves, you might find two or three groves in any locality that would have it?

Mr. Hampton: Yes.

Mr. Call: I think that is a correct statement of it. That is all.

Commissioner Prouty: We will suspend now until ten o'clock tomorrow morning.

(Whereupon, at 4:45 o'clock p. m., the further hearing of the above case was adjourned until March 24th, 1910, at ten o'clock a. m.)

224 LOS ANGELES, CALIFORNIA, *March 24th*, 1910—ten o'clock a. m.

Met pursuant to adjournment.
Present, parties as before.

Mr. Call: I thought perhaps counsel would want some of these documents which they have called for.

Commissioner Prouty: Let me ask first whether the defendants have examined the exhibits which were introduced yesterday morning.

Mr. Durbrow: If your Honors please, the exhibits are not very long, but the detail that is found upon the exhibits, and the facts that are shown there will require a great deal of time to check up, and we are engaged in that matter now, and probably will be able to reach some conclusion by tomorrow morning. I doubt it, however; I think it will take some time to go over those exhibits. Don't you think so, Mr. Norton?

Commissioner Prouty: Well, we will take no further action with reference to the exhibits now.

Mr. Call: I would ask, however, that they do it as speedily as possible, because we have the witnesses in attendance to prove the various exhibits; if upon any point or upon any exhibit they desire us to offer proof, we are prepared to do it.

225 Commissioner Prouty: You can indicate tomorrow morning which of the exhibits you desire further proof about.

Mr. Call: Counsel for defendants asked Mr. Woodford to produce a table showing percentages of decay for the different years from representative associations and packing houses, and we now have it to produce.

Commissioner Prouty: You may pass a copy to the defendants. Do you desire to introduce that as an exhibit?

Mr. Call: I bring it in response to the request, and will offer it as an exhibit in connection with our case.

(The paper above referred to was received in evidence and thereupon marked Complainants' Exhibit No. 18, received in evidence March 24th, 1910, and same is attached hereto.)

Mr. Call: Counsel also asked us to produce the annual reports of the Fruit Growers' Exchange, running back over a period of years, and as far as we have the record, and as far back as the beginning of the organization.

Commissioner Prouty: What do you mean by the reports, the financial reports?

Mr. Call: They asked for the annual reports. We do not make

any annual report, but the General Manager makes a report
226 every year to the directors as sort of a synopsis of the business done by the exchange during the year, and that is the only thing we have, so we have produced that.

Commissioner Prouty: You may have that introduced. For how many years?

Mr. Call: It covers a period running back to 1904 and 1905 and up to the present time; but there are only two of the reports, but they cover a preceding period of time. I will hand counsel two copies of each of these reports.

(The reports above referred to were received in evidence, and thereupon marked Complainants' Exhibits Nos. 19 and 20, and same are attached hereto.)

Mr. Durbrow: Before proceeding, a demand was served upon the Pacific Fruit Express, asking them to produce icing contracts and contracts with the railroads, and I now have to hand to the complainants a copy of the contract between the Pacific Fruit Express and the San Pedro road, the Southern Pacific, and the Union Pacific, and also the originals of contracts, some of them duplicate originals, of the Pacific Fruit Express with these different concerns that are furnishing them ice.

Commissioner Prouty: Can you allow the complainant to examine those contracts?

227 Mr. Durbrow: I was going to say that I have a memorandum of these and I can hand them to the complainant and ask to have them returned to me at the close of the hearing, and they can have until that time to examine them and make copies if they wish.

In reference to the other information, it reached me last night from Chicago, and I have two stenographers engaged in working on that, and I hope to have some tomorrow morning, and some later tomorrow, and before the close of the hearing it will all be available.

Mr. Norton: I do not understand that counsel for complainants have furnished all that I requested?

Mr. Call: No, I have not yet; they are in course of preparation. I would like to inquire whether Mr. Ripley, the President of the Santa Fe road, will be here in attendance, or any of your managing officers of the road?

Mr. Norton: General Manager Wells is convenient. We might put him on the stand.

Mr. Call: Is he acquainted with traffic matters?

Mr. Norton: He is the man who moves it.

Mr. Call: Does he make the rates?

Mr. Norton: Mr. Chambers can answer you on that.

Mr. Call: Who changes these rates? We would like to
228 have that man here.

Mr. Norton: I think Mr. Chambers will be able to give you information on that.

Mr. Call: Does he make the rates?

Mr. Norton: Well——

Mr. Call: I suspected it for some time.

Mr. J. H. Call: Before proceeding with the witness there is one matter I would like to present. The complainants have served notice to produce documentary evidence, and part of that has been produced by the defendants, and part has not been produced, it being stated that they were not obtainable, copies of certain papers. Among other things we asked to have produced were copies of the minutes of proceedings of the Trans-Continental Freight Bureau, the proceedings at which this rate was advanced. The tariffs on file show that this rate was made by a Bureau in charge of Mr. Countiss and two or three other agents of these lines. They are agents of these roads, and these minutes have been produced at former hearings of the Commission. I would call your Honor's attention to the fact that the Commission has decided in the Tift case, and referring to the decisions of the Circuit Court of the United States in
229 the Trans-Missouri Freight Association case, that where rates are advanced by combination of all of the competing lines of railroad, that those rates will be deemed to be illegally advanced, and will be deemed to be an unreasonable advance. Whatever there is of merit in that controversy we would like to have the benefit of, and we would like to have copies of those minutes, or an explanation as to why they cannot be obtained, and I would like to file copies of these notices to produce, duly served upon counsel.

Commissioner Prouty: Is there any question about the notice to produce?

Mr. Norton: No.

Commissioner Prouty: It is not necessary to cumber the record by filing it, then.

Commissioner Lane: I suppose you will admit that the rates were put in by Mr. Countiss as the representative of all railroads?

Mr. Norton: Yes, and of course, so far as any combination is concerned, our position is that that is a question not triable by the Commission. These rates were put in just exactly as the rate on oranges was once reduced from $1.25 to $1.15 voluntarily, and as the rate on lemons was once reduced——
230 Commissioner Prouty: Do you concede, for whatever it may be worth, that the advance in the lemon rate was made by agreement between the carriers, between yourself, the Southern Pacific and the San Pedro road?

Mr. Norton: No, I do not know as to that. It was made by concurrence, Mr. Chambers tells me, filed with the Commission.

Commissioner Prouty: Made by what?

Mr. Norton: By concurrence.

Commissioner Prouty: I am not talking about the mechanical method by which it was evidenced by filing something with the Commission, but about the agreement to advance the rate. Do you make any question that that was by agreement of the different lines in interest?

Mr. Norton: No, I do not admit that; I do not know as to that. Mr. Chambers will be prepared to say something about that.

Commissioner Prouty: Under our rulings and practice you would have the right to show that, although we hold that even if the rate

was advanced by agreement, that in itself would not condemn the rate.

Mr. Norton: Of course our position is that the rate cannot
231 be advanced or lowered either, by all the carriers in the United States, without some consultation or understanding.

Commissioner Lane: Have you any copy of the minutes here?

Mr. Norton: Of the Trans-Continental Freight Bureau, I have not. I understand there are none.

Mr. Durbrow: There are no minutes, your Honor.

Mr. Norton: Our idea here is that the point is that the rate has been advanced and the question is whether it was reasonable——

Commissioner Prouty: The complainants will be entitled to examine witnesses to show the manner in which the rate was advanced.

Mr. Norton: We do not object to that.

Commissioner Prouty: Do you say that the Trans-Continental Freight Bureau keeps no minutes?

Mr. Durbrow: That is a fact, as I am advised by Mr. Jones and Mr. Luce.

Commissioner Prouty: Is that freight bureau a bureau of the kind that holds meetings and acts upon rates?

Mr. Durbrow: Yes, your Honor.

Commissioner Prouty: And you say no minutes are kept of those meetings?

Mr. Durbrow: No minutes are kept.

232 Mr. J. H. Call: When did you stop keeping them?

Commissioner Prouty: Do you know who was present at the meeting when it was decided to advance this rate?

Mr. Durbrow: So far as the Southern Pacific is concerned, I believe Mr. G. W. Luce was present.

Commissioner Prouty: Mr. Luce is here?

Mr. Durbrow: No, but Mr. Jones is here.

Commissioner Prouty: Mr. Chambers, were you present?

Mr. Chambers: Yes, sir.

Commissioner Prouty: You can examine Mr. Chambers as to what occurred at that time.

Mr. Durbrow: And if the complainants desire to examine Mr. Luce, we will arrange for that.

Commissioner Lane: And if there are any minutes to be had at Chicago, they can be introduced at a subsequent hearing.

Mr. Durbrow: I understand, though, and feel very certain of it, that there are no minutes of that meeting or any of the meetings.

Mr. J. H. Call: There formerly were minutes, and they were produced in the creamery case, Mr. Matthews is familiar with that.

Mr. Durbrow: I do not know what the former practice was, but I know there were no minutes.

233 Commissioner Prouty: That was not the Trans-Continental Freight Bureau. These Traffic Associations do generally keep minutes. They have been frequently produced. You may proceed with Mr. Hampton.

S. B. HAMPTON, resumed, testified further as follows:

Mr. A. F. Call: Do you know at what age of a lemon tree the assessors and boards of equalization consider it as being in bearing?

Mr. Hampton: Five years, I believe.

Mr. Call: And at what age do they commence to bear?

Mr. Hampton: Well, they do begin to bear younger than that, to some extent, say three years old, but not in any large quantity until they are seven or eight years old.

Mr. Call: And at what age are they considered in full bearing?

Mr. Hampton: Well, I should say our oldest orchards are considered in full bearing, because they are the oldest trees. The older the tree, if it has been properly handled, the more fruit it will produce, because it has more capacity.

Mr. Call: Then a portion of this acreage that is returned
234 to the State Board by the various assessors, consists of youngish trees that are not in full bearing?

Mr. Hampton: No doubt of that, yes.

Mr. Call: And this report also includes, I suppose, the neglected groves, as well as the best groves?

Mr. Hampton: All groves over five years, as I understand it.

Mr. Call: All groves over five years, whatever their character or condition, that are over five years old?

Mr. Hampton: I would like to qualify that statement as to a full bearing tree, if I may be allowed. A tree might be in full bearing that was ever so small, but in the general term we do not say a tree is in full bearing until it has a size or age to give it a capacity to produce more fruit than a small tree could produce.

Mr. Call: Now, did you make any other investigations, or gather any other data in support or in verification of the official reports made as to acreage of lemon groves in California to which you have referred?

Mr. Hampton: I did not understand the question.

Mr. Call: Did you make any other investigation or compilations to ascertain the acreage?

235 Mr. Hampton: Oh, yes. Not all of them personally, but there has been collected from every district statements of the acreage from reliable sources in those districts, and it corresponds very accurately with the acreage as given by the State Board of Equalization.

Mr. Call: Now, in regard to the production of lemons from year to year from all of these groves, I understand you simply have taken the shipments that were returned by the railroads to the Exchange?

Mr. Hampton: Yes, sir.

Mr. Call: From day to day?

Mr. Hampton: Taken the total shipments for the years reported by the railroads.

Mr. Call: And I suppose you have not taken into account the home consumption?

Mr. Hampton: No.

Mr. Call: Nor you have not taken into account the perhaps small

amount of lemons produced on the trees that are not yet considered in bearing, as production?

Mr. Hampton: No, not as production in acreage.

Mr. Call: And I suppose you have not taken into account the small percentage of fruit that has been shipped to the northern markets in mixed cars?

236 Mr. Hampton: Not if it is not reported.

Mr. Call: I understand those are reported as oranges where they are mixed cars, are they not?

Mr. Norton: I don't know.

Mr. Call: You report them as oranges in mixed cars, don't you, Mr. Chambers, in your reports to the Exchange?

Mr. Chambers: I think so.

Mr. Call: But you did not take into account those mixed cars in your reports of production?

Mr. Hampton: I did not know anything about it, if they were reported as oranges, of course.

Mr. Call: So that those features eliminated, the acreage and production which you have given are the best you are able to obtain, are they?

Mr. Hampton: They are.

Mr. Call: Now, what is the fact with regard to the amount of money expended for care on lemon groves and what variation do you find in your investigations?

Mr. Hampton: Well, it varies a great deal in different districts and different soil formations, all enter into the cost.

Mr. Call: For instance, give us the extremes of what you found in various sections, and how you arrive at your average.

237 Mr. Hampton: In care or in general cost?

Mr. Call: In your general expense of taking care of the grove.

Mr. Hampton: My highest acreage, the highest figure from any large number of acres,——

Mr. Call: That is the largest expense, do you mean?

Mr. Hampton: The largest expense is $228 per acre.

Mr. Call: Annually?

Mr. Hampton: Annually.

Mr. Call: Is that exclusive of the picking and packing expense?

Mr. Hampton: Yes.

Mr. Call: Is that any considerable acreage?

Mr. Hampton: Yes, over 100 acres.

Mr. Call: For instance, taking some of the most profitable and productive groves in the state in the best locations for producing lemons, as for instance, Mr. Leffingwell's, of Whittier.

Commissioner Prouty: It is hardly profitable to go into this in too great detail at the present time. The witness has stated the

238 average expense, and if it becomes material to show the exact expense, or to explain what he has said, he may do so at some later time.

Mr. Call: Very well.

I wanted to ask you, then, what the effect is on a lemon grove of

a year of comparative neglect, where it is not fertilized, and a proper amount of money is not expended in the proper care and culture of the grove; what is the effect of it?

Mr. Hampton: Well, it affects it very seriously as a producer.

Mr. Call: What is the effect on the trees?

Mr. Hampton: It stops the growth; any neglect either from water, care or fertilization.

Mr. Call: How long does it take to restore that tree with the best of care into bearing again?

Mr. Durbrow: What materiality has this line of examination?

Commissioner Prouty: It seems to me, Mr. Call, that you may for the present omit that. It may become material.

Mr. Call: I think that to a very limited extent perhaps the Commission will find it a matter of interest as to the effect on the discouragement of this industry. We are a lot of farmers here in
239 California and are like all other farmers, we have to make our living and get our money out of these groves and take care of them, and you raise this rate on these farms one year, and you will knock this proposition for three years. It is not like a jobbing business or a mercantile business, because it hurts the life of the tree, and when they do not get any money, they have nothing to fertilize with.

Commissioner Prouty: Let him answer this question.

Mr. Hampton: Well, that question as given does not determine the condition the tree was in.

Mr. Call: With a period of a year or two of insufficient fertilizing, say, how long does it take to restore that tree to its normal bearing condition?

Mr. Hampton: My experience is it will take three years to get results from fertilization, that is, good fruit from care given.

Mr. Call: What is the effect on these groves and on the care and fertilizing they need of a year or two of bad results from the marketing?

Mr. Hampton: Well, the effect is that as soon as there are any bad results in return, the tree is neglected, the farmer won't spend the money on it, and his crops fall off at once, and it takes a good deal longer to get them back than it does to fall off.

240 Mr. Call: I believe you may cross-examine.

Cross-examination:

Mr. Norton: Mr. Hampton, the groves of which you have charge are Whittier, and did you say Hollywood?

Mr. Hampton: Corona, I said.

Mr. Norton: I have got the Corona Exchange, and that includes what places? I have Whittier down here and Hollywood.

Mr. Hampton: Corona did not include Whittier or Hollywood Exchanges.

Mr. Call: He is asking as to your experience in managing groves.

Mr. Hampton: I did not understand the question.

Mr. Norton: Now, you have yourself charge of 200 or 300 acres of lemons?

Mr. Hampton: Yes.

Mr. Norton: And have been in charge of that acreage how long?

Mr. Hampton: This acreage at the present time, nearly six years.

Mr. Norton: Had you had any other experience with lemons before taking charge of the Corona Exchange's property?

241 Mr. Hampton: Yes, I had some.

Mr. Norton: Did you have any conference with Professor Powell, when he was here looking into the lemon industry?

Mr. Hampton: I have talked with Mr. Powell a great many times.

Mr. Norton: Are you familiar with the report that he made as to the cost, or example, of producing a bearing acre?

Mr. Hampton: I have read it.

Mr. Norton: You gave $163.94 as the cost of making a lemon acre in bearing.

Mr. Hampton: No.

Commissioner Prouty: That was not it at all. It was the annual cost of taking care of an acre.

Mr. Norton: That is correct, the annual cost of taking care of an acre?

Mr. Hampton: Yes.

Mr. Norton: What elements did you put in the $163.94? Can you state them separately? What elements of expenditure added together make $163.94?

Mr. Hampton: It is the care given of all kinds, in labor or cultivation——

Mr. Norton: Have you the figures there so you can give them to me?

242 Mr. Call: Detailed items of cost, he wants.

Commissioner Prouty: As I understand, and if I am wrong, the witness will correct me, that is the average he arrives at from taking a great many different instances. It is hardly profitable to have him stop here and read off the expense of every man from which he makes that average. He might in some one case, but on the direct examination we declined to allow him to go into that, and it does not seem material to go into that at this point.

Mr. Norton: It is not asking what he got from every man, but what his ultimate conclusion is.

Commissioner Prouty: Have you a statement there which shows the average and which shows the cost of labor and the cost of fertilizer, the average cost of these items?

Mr. Hampton: No, I have not. I simply took the figures from each grove, the items making up their average per acre, and then averaged all in one general average.

Mr. Call: You can give that from your groves, can you not?

Mr. Hampton: I can give it from any one.

Mr. Norton: We do not want any average of averages. One average is remote enough from the fact, so let that go.

243 Now, on the 200 or 300 acres of lemons under your charge, can you tell during the several years you have been in charge of it what the acreage has produced in pounds, what has been the production in pounds per acre?

Mr. Hampton: I have not the figures at hand, but I could produce them very readily. It would take some time.

Mr. Norton: Will you do that?

Mr. Hampton: I could get them tomorrow, I think.

Mr. Norton: Can you give us for this morning an estimate of about what an acre of lemons produces in pounds?

Mr. Hampton: No, I could not do that.

Commissioner Prouty: He gave the average by boxes. You know about what a box weighs?

Mr. Norton: Yes.

Commissioner Prouty: But it appears from the testimony yesterday that the yield of lemons runs all the way from 350 to 400 boxes to the acre, down to practically nothing.

Mr. Norton: That is his general discussion of the lemon situation. I want to know as to the yield of the land which he has cultivated. He ought to be accurate on that.

Mr. Call: He will give you that exactly, as soon as we have time to prepare it.

Mr. Norton: Very well.

244 Mr. Call: Do you want it for five years?

Mr. Norton: Yes, for the time he has been at it. Now, is there any difference as to the expense of maintaining a grove among different growers?

Mr. Hampton: Oh, yes.

Mr. Norton: This $163.94 is the average of the averages that you have made up?

Mr. Hampton: Yes.

Mr. Norton: What is the difference between the labor and the expense that A puts upon his grove and that B puts upon his grove, within your knowledge?

Mr. Hampton: Well, it varies more than 100 per cent.

Mr. Norton: In what particulars does it vary?

Mr. Hampton: In all.

Mr. Norton: Well, do you mean that A fertilizes more than B?

Mr. Hampton: Yes.

Mr. Norton: How much more, 100 per cent more?

Mr. Hampton: Yes, sir, very much more than that in many cases.

Mr. Norton: He smudges more than B?

Mr. Hampton: Yes.

Mr. Norton: 100 per cent more?

Mr. Hampton: Some don't smudge at all, and others do,

245 so it must be more than 100 per cent.

Mr. Norton: And he prunes more often than B?

Mr. Hampton: Yes, some prune more than others.

Mr. Norton: I understood you to state on direct examination that the lemon orchard is very responsive to good care and to bad care also?

Mr. Hampton: Yes, sir, it is.

Mr. Norton: Then A, by his superior attention to his orchard, would get better results in fruit production; that is unfailingly so, is it not?

Mr. Hampton: Well, if he does his work or spends his money in the right way, it is.

Mr. Norton: Well, I am assuming that he knows what he is doing. Now, in the five years that you have had particular knowledge of this business, have you changed your methods of handling lemons in any way?

Mr. Hampton: The method?

Mr. Norton: Yes, the ways of picking and packing and sweating and storing?

Mr. Hampton: No, not materially.

Mr. Norton: Have no improvements been made during the last five years?

246 Mr. Hampton: We use more care. I cannot describe it any other way, that we have made any changes.

Mr. Norton: In what respects do you use more care, state.

Mr. Hampton: Take more care, use more pains in picking of our fruit and not bruising it in handling it.

Mr. Norton: Have you found from experience that bruised fruit was more perishable than fruit not bruised?

Mr. Hampton: I think it is.

Mr. Norton: Well, after picking more carefully, what do you do next more carefully?

Mr. Hampton: Well, the work through the house, all the work in handling the fruit is done with rather more care than formerly.

Mr. Norton: Is the storing process worked out any differently from what it used to be?

Mr. Hampton: Very little. Well, how far are you going back?

Mr. Norton: Well, take your figures——

Mr. Hampton: Five years?

Mr. Norton: Yes.

Mr. Hampton: No, no different.

Mr. Norton: Do you know of anything beyond five years, back of five years?

247 Mr. Hampton: Yes, I have been in packing houses most of the time for 24 years.

Mr. Norton: Then that makes it easy. During your time of information, has the method of storing fruit in store houses been improved?

Mr. Hampton: The method has been improved to some extent. The tent system has been introduced, which in some districts is much better than the old method. In other districts it is not used at all. We do not use the tent system at all in our work. It depends upon climatic conditions.

Mr. Norton: Did the suggestions of Professor Powell aid you any in the storing of your fruit, your lemons? Have they followed any of his suggestions?

Mr. Hampton: I do not think Mr. Powell has made any report or anything of the kind as to the storage of lemons, not to my knowledge.

Mr. Norton: How much decay is there now of lemons in storage?

Mr. Hampton: It varies a good deal; it is impossible to state.

Mr. Norton: Well, is it great or small?
Mr. Hampton: What do you mean by "now"?
Mr. Norton: The present year, last year or two.
248 Mr. Hampton: Last year?
Mr. Norton: Yes.
Mr. Hampton: Last year the decay was h-avy, rather heavy.
Mr. Norton: Do you mean this present season?
Mr. Hampton: We call last year ending last November, ending with the old crop.
Mr. Norton: What was the percentage of decay that year?
Mr. Hampton: It varied a great deal; I cannot state.
Mr. Norton: In that year you say it was heavy, what do you mean by that, what was the percentage, give that.
Mr. Hampton: I cannot state the percentage.
Commissioner Prouty: You have some figures already before you, have you not, showing the percentage of decay?
Mr. Call: We have given it to him in that table from several leading California shippers.
Mr. Norton: I want to get it from this exchange, this man's personal observation. These tables they have given are averages of averages again. If this man knows and has been in these packing houses all these years, I think he should state.
Commissioner Prouty: If you have any idea of the percentage of decay, let us know just what you mean by decay. Do you mean if you take so many lemons into the house, what percentage
249 do you ship out? Is that your inquiry?
Mr. Norton: However they ascertain it. They make in their reports the percentage of decay, three, five or ten per cent of decay. He knows better how they ascertain that than I do.
Commissioner Prouty: What do you mean, do you take the lemons you pick and take into the house and compare those with the lemons you ship out and so determine the percentage of decay?
Mr. Hampton: No, that percentage is not decay, that is not proper to say that that per cent is decay. The fruit is weighed into the houses, the green fruit is picked and weighed into the packing-house, and when shipped, it is weighed out. That is the general practice, and that difference in weight is generally termed loss by decay, but that is a mistake, because the actual shrinkage is very considerable in weight, aside from decay.
Commissioner Prouty: But what you mean in your reports by percentage of decay is the difference between the weight of the lemon as it comes in and as it goes out?
Mr. Hampton: As it is checked, yes, sir.
Commissioner Prouty: Do you know how large the shrinkage other than from decay is?
Mr. Hampton: Well, it varies. You mean the average for
250 the year?
Commissioner Prouty: Yes, I mean the average for a year or for a series of years.
Mr. Hampton: I think it would run from six to ten per cent in shrinkage in weight.

Commissioner Prouty: Do you include decay now?

Mr. Hampton: No.

Commissioner Prouty: That is simply the shrinkage in weight if there were no decay?

Mr. Hampton: Yes.

Commissioner Prouty: Can you state to Mr. Norton the percentage of decay arrived at in the manner you have indicated in your own experience? For instance, this year what was your percentage?

Mr. Hampton: I cannot say as to that exactly, because the years vary so much. Some years our total shrinkage will be eight or ten per cent, ten per cent, another year it might be fifteen; conditions change that very much.

Mr. Norton: I do not care about that any further, then.

Mr. Call: We have the exact report from the largest lemon association, San Dimas, which ships about 700 acres. It is
251 our largest association, and we have an exact report of the shrinkage from year to year.

Commissioner Prouty: Do you care to put it in?

Mr. Norton: I will not put it in because that is an average of averages.

Mr. Call: That is the average of averages.

Mr. Norton: I so understand from the heading.

Commissioner Prouty: I understand Mr. Call to say he has the return of a particular packing house which shows the shrinkage in the case of that one packing house, that being the largest packing house.

Mr. Norton: We may have a copy of this later?

Do you know what part of the crop, your own crop or the general crop, is now put into storage for treatment before shipping east?

Mr. Hampton: What part of the present crop?

Mr. Norton: Yes.

Mr. Hampton: I can only answer for our own.

Mr. Norton: Well, for your own, then.

Mr. Hampton: We have about—no, I cannot answer that, because I do not know what the crop will be this year.

Mr. Norton: Oh, well, last year and the year before, I mean
252 at the present time, relatively at the present time, how much of the lemon crop goes into the store house?

Mr. Hampton: Well, from 15 to 30 per cent; it varies.

Mr. Norton: And that depends upon market conditions?

Mr. Hampton: Market conditions.

Mr. Norton: If the market conditions in the east are firm, the lemons go direct to market?

Mr. Hampton: Naturally.

Mr. Norton: Otherwise you hold them for better markets?

Mr. Hampton: We make an attempt to.

Mr. Norton: Are more lemons stored in these latter days than there were formerly, relatively more lemons, a larger percentage of the crop?

Mr. Hampton: I do not think so.

Mr. Norton: You do not think so?

Mr. Hampton: No.

Mr. Norton: Have you made any investigation of that in this investigation which you have been making?

Mr. Hampton: No, not just now, but from general observation and practice.

Mr. Norton: Are the results of storing better in these latter days than they used to be, do they get better markets generally by storing than they used to?

253 Mr. Hampton: The results may be a little better, but the practice is that we do not hold as long as we used to, we do not attempt to hold as long as we used to. We found it was a mistake, and when we held the fruit too long its condition on the market was such that we could not get the price and it did not give satisfaction.

Mr. Norton: You spoke yesterday about sweating the lemons in the store house. Is that a better lemon than the unsweated lemon?

Mr. Hampton: No, only that the lemon at that time of the year is a better lemon, a better keeper, the green lemon.

Mr. Norton: Does the sweating injure it any?

Mr. Hampton: I do not think so.

Mr. Norton: It does not improve it?

Mr. Hampton: It improves its condition in this way, that it advances the condition to the same extent that it would if stored naturally a long enough time to produce the same result.

Mr. Norton: That leads up to the qualities of the lemon. During your acquaintance with the lemon industry *and* the brands of lemons changed?

Mr. Hampton: Brands, what do you mean by that?

Mr. Norton: Don't you know what I mean by the brands

254 of lemons?

Mr. Hampton: We often change brands.

Mr. Call: The brand is the trade name they use.

Mr. Norton: The name of the lemon?

Mr. Hampton: The variety, you mean?

Mr. Norton: Well, the variety, then; thank you for the correction, and excuse me for my remark.

Mr. Hampton: The variety has not changed, no.

Mr. Norton: The variety has not?

Mr. Hampton: No, not to my knowledge.

Mr. Norton: Has the grade of the lemon been improved?

Mr. Hampton: The grade of a lemon improves with the condition of the tree, as a general rule.

Mr. Norton: The grade of the lemon then depends upon cultivation?

Mr. Hampton: Very much.

Mr. Norton: Very largely?

Mr. Hampton: Well, the keeping quality of a lemon depends a good deal upon the cultivation and care and fertilization.

Mr. Norton: What makes the grade of a lemon, what makes a first class lemon? I think you stated that yesterday.

Mr. Hampton: Its being perfect makes it first grade.
255 Mr. Norton: What makes a perfect lemon, then?
Mr. Hampton: The best there is is the best grade.
Mr. Norton: And what are the elements that go into the best lemon there is, how do you determine it?
Mr. Hampton: Appearance, its firmness, lack of any blemish, perfect in shape, all those elements.
Mr. Norton: Yes, and the quantity of juice, I suppose?
Mr. Hampton: Naturally.
Mr. Norton: Are all those factors improved by cultivation, all those elements?
Mr. Hampton: Not all of them.
Mr. Norton: Do most of them depend largely upon good farming?
Mr. Hampton: Well, the most of them are improved, I think.
Mr. Norton: By cultivation?
Mr. Hampton: I think so.
Mr. Norton: And how much improvement in this direction has taken place within your experience in this locality?
Mr. Hampton: I could not say as to how much.
Mr. Norton: Well, could you say whether it is much or little?
Mr. Hampton: I think our grade is higher than it used to be years ago. We get more of the first grade fruit from year to year.
Mr. Norton: Does the quality of the lemon depend some-
256 what on the locality in which it is grown, are there some——
Mr. Hampton: Very little.
Mr. Norton: Are there some localities growing better lemons than others?
Mr. Hampton: They are generally better, if any locality produces more green, firm fruit, that locality is spoken of as being a better lemon district.
Mr. Norton: What district produces the better lemons in southern California?
Mr. Hampton: Oh, they all produce good lemons.
Mr. Call: That is one of the sensitive points of co-operation; they never discriminate.
Mr. Norton: All right, I withdraw the question. Do you know of any lemon orchards on ground unsuited to lemon growth in your experience?
Mr. Hampton: Oh, there are some, yes, no doubt of it.
Mr. Norton: Do you know of any groves that have been budded back to oranges because it was ascertained that they were not suitably situated for lemon culture?
Mr. Hampton: Well, not to my personal knowledge. I have in mind one grove that was budded, and at the time they budded it,
I remember they thought the conditions were not the best
257 there for lemons, but later on they budded it back to lemons again.
Mr. Norton: You do not know how they are getting on since the rebudding?
Mr. Hampton: Nicely, so far as the tree is concerned.

Mr. Norton: Do you know of any that were either dug up or budded back to oranges because they were found to be within the frost belt?

Mr. Hampton: I do not have any in mind, but I have no doubt there are such cases, some.

Mr. Norton: Do you know of any that were budded back because of the small quantity and the lack of storing facilities, and lack of facilities necessary for handling lemons?

Mr. Hampton: No, I do not.

Mr. Norton: You spoke yesterday in your direct testimony about some that you knew of that had been budded back. Can you tell me where they were?

Mr. Hampton: That would take some time, to tell all of them.

Mr. Norton: Well, tell us a few, a few lemon groves which were budded back to oranges because they were unprofitable as we infer your testimony to mean, on account of the rate?

258 Mr. Hampton: Well, you find them in every district, I am sure.

Mr. Norton: Name one in any district, so I can check it up.

Mr. Hampton: Name one grove?

Mr. Norton: Yes, that has been budded back to oranges?

Mr. Hampton: What do you mean, the lot and block number and location?

Mr. Norton: Oh, no, you know what I want.

Mr. Hampton: There are numbers of them that were budded back——

Mr. Norton: Will you name a man who has budded back a lemon grove to oranges because of railroad depression?

Mr. Hampton: He did not tell me that was the reason; I don't know whether that was it or not.

Mr. Norton: Well, you were testifying to that yesterday, were you not?

Mr. Hampton: I think not.

Mr. Norton: Very well; can you name a man who budded a lemon grove back to oranges for any reason, name him?

Mr. Hampton: They have probably changed hands so many times it is hard to remember the originals.

Mr. Norton: Very well. Do you know of any lemon lands that are being abandoned because the lands are undesirable for

259 lemon culture? Do you know of any orchards that are deteriorating on that account?

Mr. Hampton: Not at the present time.

Mr. Norton: You have known them?

Mr. Hampton: What was the question?

(Question repeated as follows:—)

"Do you know of any lemon lands that are being abandoned because the lands are undesirable for lemon culture? Do you know of any orchards that are deteriorating on that account?"

Mr. Hampton: I do not know of any at the present time.

Mr. Norton: You have known of them, have you?

Mr. Hampton: There have been in the past such cases.

Mr. Norton: Now, you gave as the productivity of a lemon grove in your experience, 97 packing boxes to the acre. Do I understand you right?

Mr. Hampton: I think that is a mistake.

Mr. Norton: 94, was it?

Commissioner Prouty: He said 97 was the average.

Mr. Hampton: I did not say that was my experience in producing lemons.

Commissioner Prouty: He stated exactly how he got that average. It is hardly worth while to go all over that again.

260 Mr. Norton: Well, I am not going over it. I want to know if you are familiar with the estimate made by Professor Powell for the Government?

Mr. Hampton: I have read his report; I do not remember it now.

Mr. Norton: Well, I will refresh your memory. He put it from 300 to 600.

Commissioner Prouty: 300 to 600 boxes of lemons to the acre?

Mr. Norton: Yes.

Commissioner Prouty: Well, I think this witness stated yesterday that an acre frequently produced a car, but he said that would only be some years and some acres.

Mr. Halsted: No, I think he said it was a fair crop, your Honor.

Mr. Norton: He said it ought to produce it.

Mr. Hampton: No, I did not make such a statement.

Commissioner Prouty: The stenographer's minutes will show.

Commissioner Lane: How many acres are there in bearing, of lemons?

Mr. Hampton: About 16,000.

Commissioner Lane: And only 5000 to 6000 cars of lemons that are sold?

261 Mr. Hampton: Yes.

Mr. Norton: How many bearing acres did you state?

Mr. *Norton*: I think about 16,000 over five years old.

Mr. Call: We will produce these reports, if you desire. I have them running back over a series of years from the State Boards, if you would like to verify it.

Mr. Norton: These Association reports you are to give me I think will show that.

Mr. Call: They do not show the acreage. They are only packing house reports.

Mr. Norton: You stated on your direct testimony that 3000 acres of lemon groves had been put out in the last three years. How do you explain that, if 16,000 acres of bearing trees make only 5000 carloads, and an acre ought to produce a carload.

Mr. Hampton: How do I explain what?

Mr. Norton: How do you explain that people put out 3000 acres of lemons within the last three years?

Mr. Hampton: They are hoping they can do what the successful man does, that is all.

Mr. Norton: What the successful man does?

Mr. Hampton: Yes.

262 Mr. Norton: Who is he?

Mr. Hampton: Oh, there are lots of them.

Mr. Norton: In the lemon business?

Mr. Hampton: Yes, several of them.

Mr. Norton: And in making this average you have just given a while ago, you threw in a large number of unsuccessful figures among the relatively few successful ones, is that the way you got at your deduction?

Mr. Hampton: I got as near as I could get at a fair average of acreage from each county that is growing lemons, nearly the same number of acres from each county, some of them poor groves, and some of them good groves.

Mr. Call: He is talking about the production now.

Mr. Hampton: No, he asked for the average—the production, do you refer to? Repeat the question again.

(Question repeated.)

Mr. Call: Does that refer to production or cost?

Mr. Norton: Production per acre.

Mr. Hampton: That is taking all?

Mr. Norton: The acreage which you dealt with. I understand from your examination this morning the computation was prepared for you by some other people, in part. Your examina-

263 tion was not altogether personal?

Mr. Hampton: As to production?

Mr. Norton: Yes.

Mr. Hampton: We are taking the production from the figures given by the railroads as to shipments.

Commissioner Prouty: He told you exactly how he got his production. Now, you may inquire as to how he gets at his cost of cultivating.

Mr. Norton: That is all, I think.

Mr. Durbrow: I would like to ask you if in giving the figure of $700 to $1000, which you estimated as the cost of bringing a lemon orchard to bearing, you include the cost of the land in that figure?

Mr. Hampton: Yes, there are many places that it would cost more. Many districts it would cost more than that.

Mr. Durbrow: But that is the average?

Mr. Hampton: That is only my estimate.

Mr. Durbrow: But what I wish to ask of you at this time is if that included the cost of the land, you say it does?

Mr. Hampton: That would be my idea.

Mr. Durbrow: And in bringing an orchard to bearing, and in keeping it up to the higher standard, you have spoken of

264 some operation that the lemon grower undertakes, such as irrigation, fumigating, cultivation and fertilization, and those same factors are present in the development and upkeep of an orange orchard, are they not?

Mr. Hampton: They are to some extent, of course.

Mr. Durbrow: To some extent. Now, is there any great dif-

ference in the cost of bringing a lemon orchard to bearing than an orange orchard, or in the upkeep of the two different kinds of orchards?

Mr. Hampton: There is quite a difference in the cost of the upkeep.

Mr. Durbrow: Well, let us take the first, then, in bringing it to bearing is there much difference in the cost?

Mr. Hampton: Not a large difference.

Mr. Durbrow: Now, what particular item of cost enters into the lemon orchard which is not found in the orange orchard, that is, where there is any appreciable difference?

Mr. Hampton: The lemon tree requires more pruning, it calls for more water, and it calls as it grows into a producer, it takes more fertilization.

Mr. Durbrow: Now, you use the word "more," showing there is something additional goes into the lemon orchard. To what extent, in a general way? I do not want to be specific, but
265 just to have a general understanding of this matter.

Mr. Hampton: I could not say as to what extent.

Mr. Durbrow: You could not say?

Mr. Hampton: No.

Mr. Durbrow: But there is some little additional cost, is that what I am to understand?

Mr. Hampton: There is very little difference in cost, to my mind, up to five years old.

Mr. Durbrow: But you have to irrigate, fumigate, prune, cultivate and fertilize an orange orchard, just as you do a lemon orchard?

Mr. Hampton: You don't have to do much fumigation or that sort of thing before five years old.

Mr. Durbrow: But you do all those things in an orange orchard just as you do in a lemon orchard?

Mr. Hampton: After they are producing, but not to the same extent. I think my testimony yesterday covered that.

Mr. Durbrow: In all these years you have been engaged in the lemon business, have you people learned by experience to handle the fruit more economically and in such a manner that it reaches the market in a better condition?

Mr. Hampton: We have not learned to handle it more
266 economically, no, sir; it costs us more money than formerly.

Mr. Durbrow: So you have not gained anything by experience in that line. Do you put a more attractive fruit in the market now than you did formerly?

Mr. Hampton: Attractive in what way?

Mr. Durbrow: In appearance, for instance?

Mr. Hampton: Well, the better care the groves have, they produce better fruit.

Mr. Durbrow: Let me ask this question, and I think you can answer it yes or no. In all these years, has the quality of the California lemon improved?

Mr. Hampton: I could not answer that by yes or no. The

lemon is the same lemon, the variety is the same variety, and if there is any improvement in the quality, it is an improvement in the care it has had.

Commissioner Prouty: He wants to know whether in point of fact there is an improvement in the quality.

Mr. Hampton: I think there is, in groves that are well cared for.

Commissioner Prouty: Take the lemon that California ships to market today as compared with the lemon shipped to market ten years ago, are more of those lemons first quality?

267 Mr. Hampton: Yes, sir, I think they are.

Commissioner Prouty: More of them are first quality?

Mr. Hampton: I think so.

Commissioner Prouty: Is the first quality the same now as it was then?

Mr. Hampton: Very nearly so.

Commissioner Prouty: About the same?

Mr. Hampton: Very nearly so.

Mr. Durbrow: There is one more question I want to ask you, and that is on the question of storing lemons. Are you a member of this Exchange of which Mr. Woodford is General Manager?

Mr. Hampton: Yes, sir.

Mr. Durbrow: You heard him testify yesterday as to the manner in which you people market your crop. Now, is it a fact that the lemon shipper has the advantage of the orange shipper in that he is enabled to keep his commodity for two or three or four months to await a favorable market in the east, and that he is enabled by the sweating process to bring the lemon to maturity so that it may be shipped at an early date when the market is favorable? That is a fact, is it not?

268 Mr. Hampton: It is a fact that he has that advantage in sweating the lemon to get it off in the fall, but that is a very small per cent of our crop, very slight.

Mr. Durbrow: And he has the further advantage of being able to store his lemons without the necessity of refrigeration for several months to await a favorable market; is not that a fact?

Mr. Hampton: I do not consider that is an advantage. An orange will keep as long on the tree as a lemon will keep in the house.

Mr. Durbrow: I understand that an orange will keep five months on the tree after it reaches maturity.

Mr. Hampton: We pick navels in December and we pick navels in May.

Mr. Durbrow: That is not the question. I want you to be fair in this matter.

Mr. Hampton: Yes.

Mr. Durbrow: When a lemon is picked, you can pick it and keep it for four or five or six months and then send it on to market, or you can by sweating that lemon bring it to maturity and ship it at any time in the meantime so it will reach the market when the market is favorable; is not that a fact?

Mr. Hampton: Now, we do not keep our stuff more than three months.

269 Mr. Durbrow: I am not asking you whether you do keep them, but if it is not possible to do that?

Mr. Hampton: It is possible to keep a per cent of them that long.

Mr. Durbrow: And you do it as a matter of fact, don't you?

Mr. Hampton: No, we do not.

Mr. Durbrow: You do not?

Mr. Hampton: We do not keep our fruit six months, ever.

Mr. Durbrow: How many months do you keep it?

Mr. Hampton: Not over three months, if it is possible to sell them for any profit at all.

Mr. Durbrow: You can and do keep your lemons three months, and in between that time, from the time the fruit is picked until the three months' period has expired, you are enabled to put your lemons in the market; that is a fact, is it not?

Mr. Hampton: A percentage; there is quite a large per cent some years that is just as perishable as any orange, and which must be picked.

Mr. Durbrow: That is all.

Commissioner Prouty: You say a lemon is picked when it is a certain size?

Mr. Hampton: Yes.

270 Commissioner Prouty: How long can you leave that lemon on the tree after it is the proper size to pick?

Mr. Hampton: You cannot leave it two weeks.

Commissioner Prouty: So it must be picked within about two weeks of a certain day?

Mr. Hampton: Yes, sir, it must be picked.

Commissioner Prouty: But after the lemon has been picked it can be sent to market immediately or be stored for some time?

Mr. Hampton: The green stock can, the firm fruit.

Commissioner Prouty: And now take an orange, when the orange is fit to pick, must it be picked at that time?

Mr. Hampton: No.

Commissioner Prouty: How long can an orange be left on the tree?

Mr. Hampton: Some seasons the same fruit will stay on the tree for months.

Commissioner Prouty: What do you mean by months, two or three months?

Mr. Hampton: Yes, or more.

Commissioner Prouty: Are your oranges all ripe at the same time, or do they ripen gradually?

271 Mr. Hampton: Well, they are ripe pretty nearly at the same time, not absolutely, but——

Mr. Call: That is, you mean the navels?

Mr. Hampton: Yes, any one given variety.

Commissioner Prouty: So that a man who raises navel oranges can exercise his option about picking them, beginning some time in December and running along into April?

Mr. Hampton: Yes.
Mr. Call: And some districts, even into May.
Mr. Durbrow: If I may be permitted one more question, so I understand the citrus fruit crop, both oranges and lemons, may be marketed at any time within three months, at the grower's option?
Mr. Hampton: I think that is true to a large extent.
Mr. Durbrow: That is all, thank you.
Mr. Norton: I would like to ask you about the cost of pruning lemons, and how you arrive at it?
Mr. Hampton: The cost of pruning?
Mr. Norton: Yes, the cost per acre; there are 100 trees on an acre. How many trees will a man prune in a day?
Mr. Hampton: It varies very much.
Mr. Norton: Well, on an average, under ordinary circumstances?
272 Mr. J. H. Call: You do not want any average of averages?
Mr. A. F. Call: There are not 100 trees to the acre?
Mr. Hampton: No, there are not 100 trees, to begin with, to the acre.
Mr. Norton: How many?
Mr. Hampton: 75 or 80.
Mr. Norton: Can you tell how many a man will prune in a day, generally speaking?
Mr. Hampton: It is all owing to the condition the tree is in; it might be 10 and it might be 20.
Mr. Norton: How much do you pay him a day?
Mr. Hampton: $2.50 is an average.
Commissioner Prouty: What is the life of a lemon tree?
Mr. Hampton: We do not know; our oldest trees are in fairly good condition.
Mr. Norton: What is the life of an orange tree?
Mr. Hampton: I could not say.
Mr. Norton: That is all.
Commissioner Prouty: Do you desire to examine, Mr. Halsted?
Mr. Halsted: I have no questions.
Mr. Norton: Do you know how old some of the lemon trees in bearing here are?
273 Mr. Hampton: Oh, I think 25 years.
Mr. Norton: And I understood you to say they are in good bearing yet?
Mr. Hampton: I think so, yes.
Mr. Norton: Do you know the age of an apple tree?
Mr. Hampton: I don't know anything about apple trees.
Mr. Norton: Peach trees?
Mr. Hampton: No.
Mr. Norton: Pear tree?
Mr. Hampton: I don't know anything about it.

Redirect examination:

Mr. Call: A lemon tree is subject to some diseases, the tree itself, besides the pests you spoke of yesterday?

Mr. Hampton: Yes, more than any other variety of citrus fruit.
Mr. Call: It is a more tender tree than the orange tree, is it not?
Mr. Hampton: Yes.
Mr. Call: There is a certain percentage of the trees dying in the groves from various causes, which has to be replaced from year to year?
Mr. Hampton: Yes, quite a per cent in some groves.
274 Mr. Call: And in most groves there is a certain percentage?
Mr. Hampton: Yes.
Mr. Call: Some that need to be replaced every year?
Mr. Hampton: Yes.

Witness excused.)

275 JOHN P. TRIOLO, called as a witness, being duly sworn, testified as follows:

Direct examination:

Mr. Call: Where do you reside?
Mr. Triolo: Corona.
Mr. Call: How long have you lived in this country?
Mr. Triolo: Ten years about.
Mr. Call: You are a native of Italy?
Mr. Triolo: A native of the United States.
Mr. Call: But from foreign parentage?
Mr. Triolo: My father was an Italian.
Mr. Call: And you have been engaged in the lemon business in both countries?
Mr. Triolo: Both countries, yes, sir.
Mr. Call: How long have you been in the lemon business in this country?
Mr. Triolo: About ten years.
Mr. Call: In what capacity?
Mr. Triolo: I manage Mr. Flagler's lemon grove there at Corona.
Mr. Call: How large a grove has Mr. Flagler?
Mr. Triolo: About 150 acres.
276 Mr. Call: And does he have his own packing house?
Mr. Triolo: His own packing house, yes, sir.
Mr. Call: You attend to both the producing and the packing for him?
Mr. Triolo: Yes.
Mr. Call: And marketing for him?
Mr. Triolo: Yes.
Mr. Call: That is John H. Flagler, the oil man. How old is Mr. Flagler's grove?
Mr. Triolo: They will run from twelve to fifteen years old.
Mr. Call: Is there any better location for a grove in California that you know of than that grove?
Mr. Triolo: Not that I know of.
Mr. Call: Any better class of tree that you know of?
Mr. Triolo: Well, they will average with the rest.
Mr. Call: Any better soil conditions that you know of?

Mr. Triolo: Not on the average.
Mr. Call: You have had charge of that grove you say for twelve years?
Mr. Triolo: Ten years.
Mr. Call: What was your work and experience in the old country?
277 Mr. Triolo: I ran a packing house at Palermo and oftentimes at Messina; that is, buying and shipping to the United States for Porter Brothers Company.
Mr. Call: Porter Brothers company are importers and large fruit distributors?
Mr. Triolo: They were, yes, sir.
Mr. Call: Or were in their day?
Mr. Triolo: Yes.
Mr. Call: And were you familiar with the transportation questions of Sicily at that time?
Mr. Triolo: Absolutely.
Mr. Call: You know the cost of labor there?
Mr. Triolo: Absolutely.
Mr. Call: The amount of labor expended on groves?
Mr. Triolo: Yes.
Mr. Call: The cost of packing?
Mr. Triolo: Yes, sir.
Mr. Call: The amount of labor expended on packing?
Mr. Triolo: Yes, sir.
Mr. Call: And the cost of transportation to the United States?
Mr. Triolo: Absolutely.
278 Mr. Call: That was all embraced within your work in Italy?
Mr. Triolo: Yes, sir.
Mr. Call: Was Mr. Flagler's grove in full bearing when you took charge of it, or were the trees in bearing?
Mr. Triolo: Parts of them were and parts were not; that is in full bearing; they were all in bearing.
Mr. Call: During the ten years you have had charge of his grove, do you know how many years they paid a profit or how many a loss?
Mr. Triolo: Yes.
Mr. Call: How many?
Mr. Triolo: Well, it has practically paid some profit, a very small one, for the last three years; before that it never did pay any profit.
Mr. Call: For the seven years preceding Mr. Flagler put up a deficit, did he?
Mr. Triolo: Yes, sir.
Mr. Call: During the last three years it gave him some profit?
Mr. Triolo: Yes, sir.
Mr. Call: In the old country what is the cost of labor in the groves, say?
279 Mr. Durbrow: I would like to ask, please, if this question is directed to the cost of labor at the present time or the cost of labor ten years ago?
Mr. Call: Perhaps I had better ask a further question. Since you left Italy have you kept in touch with conditions there?

Mr. Triolo: In a way, that is, through correspondence.

Mr. Call: Through your people and correspondence and——

Mr. Triolo: And people coming over.

Mr. Call: And people back and forth?

Commissioner Prouty: I think the testimony on this subject ought to be very general. He should state in a general way what the costs are. We cannot undertake to try this question as a committee of Congress would.

Mr. Call: My question I had in mind was the question of transportation and just a general question or two as to cost. How does the labor cost of producing a box of lemons on the ship compare with the labor cost in the United States on the car?

Mr. Triolo: I do not understand the question fully.

Mr. Call: The general cost of labor, how does it compare for producing a box of lemons, what per cent?

280 Mr. Triolo: Well, that would be very hard to say without figuring it out, except that you could say that the labor costs are practically one-fifth or one-sixth of the labor costs in California.

Commissioner Prouty: Let him state how much they pay in Italy for a laborer per day.

Mr. Call: What is the cost per day?

Mr. Triolo: The labor cost per laborer will run from two to three francs per day, which equals forty to sixty cents.

Commissioner Prouty: How does the amount of labor which a man performs there compare with what he does here?

Mr. Triolo: Well, it is practically the same; a man will do about the same amount of work, possibly——

Mr. Call: What is the cost for women and boys used in packing?

Mr. Triolo: 20 cents a day.

Mr. Call: How do the units of labor for a day's work compare with the units here?

Mr. Triolo: Practically the same; a man will do as much work there as he will here.

Mr. Call: And the cost of labor in this country in the same work is what?

281 Mr. Triolo: It is practically, that is, the cost over there would be about one-fourth or one-fifth anyway—no I am mistaken here. I was figuring three francs, 60 cents; it would be about one-third.

Mr. Call: For men?

Mr. Triolo: Yes.

Mr. Call: What is it for women?

Mr. Triolo: That would be the difference between 20 cents a day and $1.25 to $1.75 a day.

Mr. Norton: Did you give the men's wages here?

Mr. Triolo: Well, men's wages here will run from $1.75 to $2.75, $2.50 probably would be better.

Mr. Call: How do the hours of work compare?

Mr. Triolo: The hours over there are longer. They work practically from sun up to sun down.

Mr. Call: What is the transportation cost, say from point of production to New York Harbor?

Mr. Triolo: From the point of production, that is from the grove?

Mr. Call: From the grove to New York Harbor.

Mr. Triolo: Would that include wagon haulage?

Mr. Call: Well——

282 Commissioner Prouty: How do you get the lemons from the grove to the dock in Sicily?

Mr. Triolo: The groves on an average are say five miles' haul by wagon either to the railroad or to the packing house. In some parts, that is probably 30 per cent of the crop, it would have to be transported some distance on the railway; in other words, from 20 to 60 miles and is taken into the packing houses and re-packed and taken and put on board ship. Of course there is some charge, about 30 per cent of the total amount would have some railroad charge and probably 70 per cent would have just the wagon haulage.

Mr. Call: The railroad as I understand runs in a circle around the island?

Mr. Triolo: Yes.

Mr. Call: Following the Coast?

Mr. Triolo: Following the Coast.

Mr. Call: The island is practically a mountain, is it not?

Mr. Triolo: The island is practically a mountain.

Mr. Call: And these lemon fields are up the slope a short distance from the coast?

Mr. Triolo: Yes.

Mr. Call: The road runs around the coast and the groves are a distance from Palermo or Messina and other shipping

283 points and they are hauled down and put in the train?

Mr. Triolo: Yes, sir.

Mr. Call: What is the charge per train or carload?

Mr. Triolo: Very small.

Mr. Call: What is the average, pro rated on the entire crop of Sicily, what is the average railway charge?

Mr. Triolo: Figuring from my own experience I should judge ten or twelve dollars a car of 250 boxes.

Commissioner Lane: Are there cars over there that will hold 250 boxes?

Mr. Triolo: The cars will hold about 250 boxes, yes, sir.

Mr. Call: Then do you have a lighterage charge for putting it on ship?

Mr. Triolo: That is very, very small.

Mr. Call: They do lighter it?

Mr. Triolo: Yes, sir, but it is very small.

Mr. Call: What does it amount to per ton?

Mr. Triolo: I could not say per ton.

Mr. Call: Or per box?

Mr. Triolo: I would say about one-quarter to one-half a cent a box.

284 Mr. Call: What is the general transportation charge by vessel to New York Harbor?

Mr. Triolo: The rate as usually charged is a shilling and four pence.

Mr. Call: What does that equal per box?

Mr. Triolo: That is 33 cents, that is, figuring the shilling as 25 cents, but of course it is not.

Mr. Call: What is the actual charge?

Mr. Triolo: The actual charge is about a shilling: that is there is about 4 cents comes back in rebates, as a rule, which would make it a little less than 25 cents a box, that is from Palermo to any one of the receiving points, that is, New York or Boston. New Orleans is sometimes a little bit higher.

Mr. Call: Including your lighterage charge and ocean transportation charge it is about 25 cents?

Mr. Triolo: Yes.

Mr. Call: Is there any wharfage charge on this side to get it on the dock?

Mr. Triolo: No.

Mr. Call: Where you sell them at auction, that is on the piers where you have the auction sales?

Mr. Triolo: No, I do not believe there is; I am not
285 absolutely sure of it, but if there is, it is a very small charge.

Mr. Call: Is there a lighterage charge there for lightering, or do the ships go to the end of the docks?

Mr. Triolo: No, the ships go to the end of the pier, as a rule, that is at Palermo; at Messina they go right to the dock.

Mr. Call: Is there a lighterage charge there?

Mr. Triolo: The steamer assumes all that.

Mr. Call: You may cross examine.

Commissioner Prouty: Are these lemons sold at auction in New York?

Mr. Triolo: Yes, sir; as a rule.

Commissioner Prouty: By whom are they bought?

Mr. Triolo: A large percentage of the production over there is bought by New York speculators, about half a dozen New York speculators, importers.

Commissioner Prouty: Those importers buy the lemons in Sicily and bring them into this country and sell them at auction in New York?

Mr. Triolo: As a rule, yes, sir.

Commissioner Prouty: Who are the buyers in New York?

Mr. Triolo: You mean when you come down to the small lots?

Commissioner Prouty: I do not care whether they are
286 small lots or big lots; in what sized lots are they sold in New York at auction?

Mr. Triolo: I am not absolutely sure; but I think 100 boxes or more.

Commissioner Prouty: Who are the buyers?

Mr, Triolo: The brokers or representatives of firms or from other points.

Commissioner Prouty: And those are usually jobbing firms, are they?

Mr. Triolo: Yes, sir; they are bought for the jobbing firms.

Commissioner Prouty: So that a jobber in Chicago or Cincinnati would have his representative in New York who would buy lemons at auction in New York and ship to him in Chicago or Cincinnati?

Mr. Triolo: Yes, sir.

Cross-examination:

Mr. Norton: Where are the lemons sold generally in the United States, where were they when you were dealing in Italian lemons?

Mr. Triolo: The principal proportion, I should judge, probably 90 per cent, were sold in New York.

Mr. Norton: For consumption there?

Mr. Triolo: No.

Mr. Norton: Where were they consumed, ordinarily, I mean?

287 Mr. Triolo: Well, all over. I suppose New York would take its proportion and other large cities and towns their proportion.

Mr. Norton: But can you tell in what part of the United States, more than half of the crop went, say, or half of the import, rather?

Mr. Triolo: I could not state precisely, no, sir. But at every auction sale there are representatives from almost every city in the east there, that is from Chicago.

Mr. Norton: From your knowledge, how far west did Italian lemons go?

Mr. Triolo: At that time?

Mr. Norton: Yes.

Mr. Triolo: Well, they went as far as Denver ten or twelve years ago.

Mr. Norton: When was it you were in Italy?

Mr. Triolo: Ten years ago.

Mr. Norton: You spoke of wages. Is it not true that the wages of Italians have increased since you left there?

Mr. Triolo: Not to my knowledge; I don't believe they have.

Mr. Norton: Have you any knowledge on the subject?

Mr. Triolo: Well, the only knowledge I have is from the men that come from there, that is men who used to work for me over

288 there who have come over here.

Mr. Norton: What land did I understand you had charge of now, Mr. Flagler's?

Mr. Triolo: I have been in charge of Mr. Flagler's.

Mr. Norton: For how long?

Mr. Triolo: About ten years.

Mr. Norton: Up to three years ago Mr. Flagler suffered a deficit?

Mr. Triolo: Yes, sir.

Mr. Norton: Can you explain what were the causes of the deficit?

Mr. Triolo: Well the biggest reason was the non-production, I presume; that is, they did not produce as much as they do now.

Mr. Norton: How old are his trees now?

Mr. Triolo: Well, they run from twelve to fifteen years old.

Mr. Norton: And they have been producing and have been productive in the last three years?

Mr. Triolo: Yes.

Mr. Norton: And what change in the last three years has taken place in the care of Mr. Flagler's trees to make them productive?

Mr. Triolo: Nothing that I know of except that conditions have been better as regards water and so forth. In Corona they have been better the last six or seven years.

Mr. Norton: They have been better the last six or seven
289 years?

Mr. Triolo: Yes, sir.

Mr. Norton: And has he paid more attention to fertilizing the last few years? Has he expended more money per acre for fertilization than formerly?

Mr. Triolo: Yes, sir.

Mr. Norton: Has he paid more attention to smudging?

Mr. Triolo: We never smudge.

Mr. Norton: But during the last few years his water supply has been better you say?

Mr. Triolo: Yes.

Mr. Norton: In the shipment of lemons from Italy to the United States, over to New York, are you prepared to tell what percentage of decay there was on board the ship? I understood from the testimony yesterday that it takes about thirty days to get them over.

Mr. Triolo: Well, no, not as a rule. The long time steamers would take thirty days, but as a rule—the fastest time I ever knew was fourteen days, from fourteen to twenty-five days.

Mr. Norton: Well on an average, if I may refer to the averages again, how long does it take?

Mr. Triolo: I should judge from twenty-two to twenty-five days, along in there.

Mr. Norton: My idea from an examination of the records
290 was that it ran up pretty close to it.

Mr. Triolo: Yes, pretty close to it.

Mr. Norton: During that month how much deterioration is there of the fruit on shipboard?

Mr. Triolo: That depends a good deal on the time of the year.

Mr. Norton: Well, take the different times of the year, in what time is the most deterioration?

Mr. Triolo: In February to May.

Mr. Norton: How heavy is it in February to May?

Mr. Triolo: It will average probably from 3 to 10 or 15 per cent.

Mr. Norton: And what is the deterioration from May around to February?

Mr. Triolo: Very small.

Mr. Norton: How small?

Mr. Triolo: Oh I should judge 3 to 5 per cent.

Mr. Norton: What is the deterioration after arrival?

Mr. Triolo: That is something that I don't know.

Mr. Norton: Are they sold quickly after arrival as a rule?

Mr. Triolo: Oh yes.
Mr. Norton: At any price?
Mr. Triolo: Sold at auction,
291 Mr. Norton: For anything that they will bring?
Mr. Triolo: Yes.
Mr. Norton: Have you given any particular attention to the decay of Italian lemons in transit?
Mr. Triolo: Well yes.
Mr. Norton: What study have you made of it?
Mr. Triolo: Well——
Mr. Norton: Have you any figures on the subject?
Mr. Triolo: No figures exactly, except my remembrances of the amount of decay that used to happen.
Mr. Norton: When you represented the New York importers in Sicily did they make any reports to you about the condition of the cargo on arrival?
Mr. Triolo: Always.
Mr. Norton: And from those reports you make the estimate that the decay was only 3 per cent in transit, 3 to 15 per cent and as low as 3 per cent?
Mr. Triolo: As low as 3 per cent.
Mr. Norton: And as high as 15 per cent?
Mr. Triolo: That is, I am giving you an average. Sometimes it will run to 40 per cent on some certain lot in a cargo, but I am giving you about what I consider the average.
292 Mr. Norton: Did it ever run higher than 40 per cent to your knowledge?
Mr. Triolo: Oh yes.
Mr. Norton: How high?
Mr. Triolo: I have known of delayed steamers for some reason, a wreck or some other cause, that would be practically worthless.
Mr. Norton: Practically worthless, nearly 100 per cent. Now who bears the loss in those cases?
Mr. Triolo: The importer, I should judge.
Mr. Norton: Do you know?
Mr. Triolo: Yes, that is the importer would bear the loss, that is the first loss, of course, would fall on the importer, but he would be insured to the amount of his loss there and he would eventually get it out of the insurance companies.
Mr. Norton: Would he pay the grower the full price of the cargo?
Mr. Triolo: Oh yes.
Mr. Norton: What is the full bearing acreage of Mr. Flagler?
Mr. Triolo: About 150 acres.
Mr. Norton: About how many acres has he non-bearing?
Mr. Triolo: None.
Mr. Norton: All bearing?
293 Mr. Triolo: Yes, sir.
Mr. Norton: What is the cost of ocean insurance on lemons?
Mr. Triolo: I don't remember: very small cost.

Mr. Norton: That is in addition to the cost of transportation?
Mr. Triolo: It is a small addition to the cost of transportation.

Mr. Norton: That is all.

Commissioner Prouty: Do you know how many lemons you shipped last year from Mr. Flagler's grove?
Mr. Triolo: Lemons, around ninety cars?
Commissioner Prouty: Ninety cars?
Mr. Triolo: Yes.
Commissioner Prouty: You say you have 150 acres?
Mr. Triolo: Well, no, there are not quite 150 acres in lemons. He asked me how many acres we had in bearing.
Mr. Norton: I was asking about lemons.
Commissioner Prouty: How many have you of lemons in bearing?
Mr. Triolo: About 120, I should judge.
Commissioner Prouty: And from the 120 acres, all in bearing, you shipped ninety cars last year?
Mr. Triolo: Yes, sir.

Commissioner Prouty: How many do you expect to ship this year?

294 Mr. Triolo: Well, probably the crop must be 30 per cent less than it was last year.
Commissioner Prouty: Less than it was last year?
Mr. Triolo: 25 to 30 per cent less.
Commissioner Prouty: Owing to what is it less this year?
Mr. Triolo: Just natural reasons; last year was a heavy year.
Mr. Norton: Any frost this year?
Mr. Triolo: Well yes, some.
Mr. Norton: Were you affected by frost?
Mr. Triolo: Not very heavy, no.
Mr. Norton: How many boxes in a car of lemons?
Mr. Triolo: They will run 312 to 324.
Mr. Call: How did your decay last year correspond with the previous years? Your percentage of decay?
Mr. Triolo: Very heavy, I should say.
Mr. Call: You mean it has been the heaviest in recent years?
Mr. Triolo: Yes, sir.
Mr. Durbrow: I should like to ask you if the Italian growers of lemons store their fruit when the fruit is ultimately to be brought to the United States; do they store their fruit as the California growers do?

295 Mr. Triolo: Sometimes.

Mr. Durbrow: Would you kindly tell us in a general way how long it requires to bring the fruit from the orchard in Italy or Sicily to the steamer?
Mr. Triolo: From the orchard?
Mr. Durbrow: To the steamer, what is the general average? I am assuming the fruit has been picked from the trees and transported to the packing house, packed and placed on board the steamer

Mr. Triolo: About a week or ten days, I should judge that is the average.

Mr. Durbrow: And the course of the voyage is approximately a month or twenty-five days I suppose.

Mr. Triolo: Yes.

Mr. Durbrow: When a shipment of lemons is destined to New York how many months do they store that shipment in Sicily, if they store it at all?

Mr. Triolo: I have known of cases—in fact it is done every year in Messina, they store them in November and ship them in March.

Mr. Durbrow: And they store them in practically the same manner the California lemons are stored?

296 Mr. Triolo: No, not in the same manner.

Mr. Durbrow: Not in the same manner, but——

Mr. Triolo: They are stored, yes.

Mr. Durbrow: They are stored so they will be preserved and brought to maturity?

Mr. Triolo: Yes, sir.

Mr. Durbrow: Can the California lemons be stored as long a time as the Italian or Sicilian lemons?

Mr. Triolo: Yes, with the same care and same attention.

Mr. Durbrow: In bringing the Sicilian lemons to New York Harbor or any of the other ports of entry you are obliged to team-haul it to the railroad train or to the packing house, and in bringing the lemons to the United States it involves a haul from the orchard to the train, the train to the lighter, the lighter to the ship, and the ship across the Atlantic to New York; is not that a fact?

Mr. Triolo: Well, on a certain percentage.

Mr. Durbrow: Is that the general rule?

Mr. Triolo: On a certain percentage it requires a railroad haul, but on probably 70 per cent there is no railroad haul.

Mr. Durbrow: You have been speaking about comparative wages. I will ask you if you can tell us how the wages of the team-

297 sters and railroad men and the crew of the steamer compare with the wages paid by the American rail carriers to their switchmen and train crew?

Mr. Call: If your Honor please, is not that rather remote?

Mr. Durbrow: I would like the witness to answer that question.

Commissioner Prouty: If he knows, he may answer that question.

Mr. Triolo: Of course an American gets a great deal more.

Mr. Durbrow: Give us as near as you can.

Mr. Triolo: Well, what do you mean, what does a switchman get?

Mr. Call: They pay $1.00 a day to trackmen.

Mr. Durbrow: Well, there is some agitation at the present moment for an increase, but it is a fact that the American carriers pay more.

Commissioner Prouty: Do you know what railroad men are paid over there, or what train men or engineers or track men are paid?

Mr. Triolo: No, that is, I have no knowledge; I have an idea but I have no knowledge.

Commissioner Prouty: You may state your general impression of what a track man is paid in Sicily.

Mr. Triolo: On an average I should judge he would be paid about two and a half francs, probably 50 cents a day.

298 Commissioner Prouty: And the fireman would be paid how much?

Mr. Triolo: Well the fireman and engineer would be skilled labor, I suppose, you might say, because there is very little of that class of labor there in that country. They would probably get 75 cents a day, say.

Mr. Durbrow: That is all.

Mr. Norton: Mr. Triolo, are the lemons on arrival at New York sold at the dock at which they are delivered or are they transported elsewhere in the City?

Mr. Triolo: The lemons remain on the dock and are inspected there and are sold at auction uptown; that is, there is a regular auction room uptown and they are sold by means of catalogs.

Mr. Halsted: What does it cost per year per acre for water in Corona on this Flagler ranch?

Mr. Triolo: We consider two shares to the acre as an average there; it costs twelve dollars a share; about twenty-four dollars an acre.

Mr. Halsted: Twenty-four dollars per acre per year?

Mr. Triolo: Yes.

Mr. Halsted: Is not that higher than the general average through southern California?

299 Mr. Triolo: It is higher, yes, sir.

Redirect examination.

Mr. Call: Do the Italian first grade lemons, or strong lemons as we know them in the business, come at the same season of the year as the California lemons?

Mr. Triolo: Do you mean strong in acid?

Mr. Call: Strong in carrying and keeping qualities.

Mr. Triolo: Practically, yes.

Mr. Call: That is, it is the fall and early winter lemon that is strong in both countries?

Mr. Triolo: Yes, sir.

Mr. Call: And that is the lemon that can be stored in both countries?

Mr. Triolo: Yes.

Mr. Call: Can they store their late winter and spring lemons?

Mr. Triolo: No.

Mr. Call: Their late winter and spring crop is weak the same as ours is weak?

Mr. Triolo: Yes.

Mr. Call: And in neither country will any large percentage of them stand storage, that is, they must ship their heavy crop the same as we must ship our heavy crop, it will not keep?

300 Mr. Triolo: Exactly.

Mr. Call: And their green lemons that they produce in the

early fall and early winter are the ones they store and bring over here whenever the market justifies?

Mr. Triolo: Yes, sir.

Mr. Call: But their big crop comes over here the same as our big crop, and at the same time?

Mr. Triolo: At the same time, yes, sir.

Mr. Norton: How about decay in storage in Italy as compared with decay in storage here?

Mr. Triolo: Well, with the same,—that is, you can consider that the lemons are practically the same, and with the same handling and same usage you get practically the same decay.

Mr. Norton: How are they handled in Italy as compared with here? Was it you who told how carefully they are handled here now or the preceding witness?

Mr. Triolo: I did not say.

Mr. Norton: As a matter of fact they are handled with more care here now?

Mr. Triolo: Yes.

Mr. Norton: How are they handled in Italy?

Mr. Triolo: In the same manner; that is, they endeavor
301 to use as great care as possible in handling.

(Witness excused.)

H. B. CHASE was called as a witness, and being duly sworn, testified as follows:

Mr. Call: I may state to your Honors that I am just now leaving the lemon branch of the case and going into the orange branch, but before doing so, if the Commission or counsel on the other side wish to have more explicit testimony as to the cost or productivity of the lemon industry, we have some one hundred lemon growers of the different parts of the country, and are willing to produce any of them that anyone wants to examine.

Mr. Durbrow: I would like to avail myself of that invitation and ask Mr. Call if he will call Mr. Teague. I understand he is one of the largest and most successful lemon producers and a man who has paid a great deal of attention to the details of lemon culture, and I would like an opportunity of asking Mr. Teague a few questions.

Mr. Call: If he is here we will call him, or if not we will send and ask him to be here tomorrow morning.

Commissioner Prouty: You may proceed with Mr. Chase
302 now.

Mr. Norton: Do you expect us to examine Mr. Chase on the lemon question?

Mr. Call: No, Mr. Chase is not a lemon grower, he is an orange grower, and I was passing from that subject, was the reason I spoke of it at that time.

Commissioner Prouty: We think the testimony as to the production of lemons has been sufficient to indicate the general condition of the industry. If you desire to show anything to the contrary, you should call some witness. Mr. Call volunteers to have the wit-

ness to whom you refer here tomorrow morning and you can examine him if you desire.

Mr. Durbrow: Yes, I will ask him but a very few questions.

Direction examination:

Mr. Call: Where do you reside?
Mr. Chase: Riverside.
Mr. Call: You are engaged in the production of oranges?
Mr. Chase: Yes, sir.
Mr. Call: Does that include the culture of the groves, and shipping and marketing?
Mr. Chase: Yes, sir.

Mr. Call: How long have you been engaged in this busi-
303 ness?

Mr. Chase: Oh for fifteen to eighteen years.
Mr. Call: What is the extent of your acreage?
Mr. Chase: We own 1500 acres.
Mr. Call: You are not in any way connected with the Exchange or any of the Associations?
Mr. Chase: No, sir.
Mr. Call: Your shipments are all independent?
Mr. Chase: Yes, sir.
Mr. Call: You do your own marketing?
Mr. Chase: Yes, sir.
Mr. Call: And your crop is marketed usually at auction?
Mr. Chase: Entirely at auction.
Mr. Call: Most of it in New York and Boston?
Mr. Chase: New York, Boston, Pittsburgh and Baltimore.
Mr. Call: You keep records of your costs?
Mr. Chase: Yes, sir.
Mr. Call: And aside from these records of your own costs, are you familiar with the acreage and costs at Riverside?
Mr. Chase: Yes, sir; in a general way.
Mr. Call: You know about what it costs to take care of an acre of oranges at Riverside?
Mr. Chase: Yes, sir.

304 Mr. Call: Riverside is the largest producing territory in California?

Mr. Chase: The production is less at Riverside than at any other place.
Mr. Call: The largest acreage?
Mr. Chase: Yes, sir.
Mr. Call: The largest producing district?
Mr. Chase: Yes, sir.
Mr. Call: Produces more carloads and has more acres?
Mr. Chase: Yes, sir.
Mr. Call: And one of the largest producing districts?
Mr. Chase: Yes, sir.
Mr. Call: It is that district which has given the name to the Riverside navel?
Mr. Chase: Yes, sir.

Mr. Call: It is an orange district rather than a lemon district, is it not?

Mr. Chase: Of recent years there has been quite a movement of lemons there, but it is an orange district.

Mr. Call: It is known as an orange district?

Mr. Chase: It is the center of the orange district.

Mr. Call: Centrally located?

305 Mr. Chase: Yes, sir.

Mr. Call: As to the industry generally?

Mr. Chase: Yes, sir.

Mr. Call: And about how far from the Coast?

Mr. Chase: About sixty miles.

Mr. Call: How far from Los Angeles?

Mr. Chase: About the same distance.

Mr. Call: Aside from these experiences have you made any special investigations in other localities and districts in regard to the cost of taking care of a grove?

Mr. Chase: Yes, sir.

Mr. Call: And of the various items which go to make up that cost?

Mr. Chase: Yes, sir.

Mr. Call: How many acres of bearing orchards do you have in Riverside?

Mr. Chase: About twenty thousand.

Mr. Call: About twenty thousand bearing acres?

Mr. Chase: Yes, sir.

Mr. Call: What is your average production in carloads there per year?

Mr. Chase: The average is about five thousand carloads of

306 oranges a year, that is about——

Mr. Call: Running back over five years?

Mr. Chase: Yes, five or six years. It runs about one hundred boxes per acre which is the lowest production in California.

Mr. Call: Has it increased of recent years or has it decreased?

Mr. Chase: Last year there was an increase over anything that had been known.

Mr. Call: Last year?

Mr. Chase: Last year, but the variation does not show any line one way or the other; five or six years ago we had almost as big a crop as we had last year.

Mr. Call: That is, once in five or six years you might get what you might call a bumper?

Mr. Chase: Yes, we get a big crop.

Mr. Call: And then you run on short rations for several years?

Mr. Chase: Yes, sir.

Commissioner Prouty: Is your acreage increasing in the vicinity of Riverside?

Mr. Chase: Yes, sir.

Commissioner Prouty: By the setting out of new groves?

Mr. Chase: By the setting out of new groves.

307 Mr. Call: And I suppose at the same time there is some certain percentage of old groves going out of bearing or being dug up?

Mr. Chase: Yes, sir; there are some groves going out all the time.
Mr. Call: They dug up several hundred acres?
Mr. Chase: Yes, the old seedling groves are going out.
Mr. Call: There will be some of them dug up?
Mr. Chase: Yes, sir; there ought to be.
Mr. Call: And going into alfalfa or something of that kind?
Mr. Chase: Sub-divisions principally.
Mr. Call: Town lots?
Mr. Chase: Yes, sir.
Mr. Call: How does the average production at Riverside compare with the remainder of the state?
Mr. Chase: It is lower.
Mr. Call: Have you figured out the average production of the state?
Mr. Chase: The average production of the state, and I will say here that I get my figures in comparatively the same way that Mr. Hampton got his, from the Board of Equalization, and the shipments from the railroad companies, and it shows the average production in the state is 115 boxes per acre.
308 Commissioner Prouty: What is your own production? You have fifteen hundred acres?
Mr. Chase: Of our acreage only 750 is in full bearing now and our production is about a box and a half to the tree, about 150 packed boxes to the acre last year.
Mr. Norton: This 115 boxes you spoke of before, are they packed boxes?
Mr. Chase: Yes, sir.
Mr. Norton: And yours is 150?
Mr. Chase: 150, yes, sir.
Mr. Call: And in the care of your own groves, I suppose you spend all the money that you can see a place for?
Mr. Chase: We take good care of our groves.
Mr. Call: If you knew of any more money you could spend on there that would get results you would spend it?
Mr. Chase: If we could get our money back and a little more, we would; some we do not get back.
Mr. Call: If you could get a little more back than you spend you would do it?
Mr. Chase: Yes, sir.
Mr. Call: You fertilize as high as you think the trees demand?
309 Mr. Chase: Yes.
Mr. Call: And it costs you how much a box to put your fruit on a car?
Mr. Chase: It cost us last year——
Mr. Call: Or delivered to the packing house, we will say.
Mr. Chase: Delivered to the packing house it cost us last year about 90 cents a packed box.
Mr. Call: About 90 cents a packed box?
Mr. Chase: Delivered at the packing house.
Mr. Call: How much did it cost you to put them on the car?
Mr. Chase: 30 cents more.

Commissioner Prouty: How much of that is the box?
Mr. Chase: The box costs 12 to 15 cents, and the rest of it is labor and paper and nails.
Mr. Call: What is the average cost of taking care of a grove in Riverside per acre per year?
Mr. Chase: It is very close to $140.00 an acre.
Mr. Call: The older groves which require higher fertilization and more pruning and more care cost more?
Mr. Chase: Yes, sir.
Mr. Call: The young groves would cost less?
Mr. Chase: Yes.
310 Mr. Call: And the deserted and abandoned groves would cost less?
Mr. Chase: Yes, sir.
Mr. Call: And you got that average from all?
Mr. Chase: Yes, sir; I got that average from all.
Mr. Call: Taking every grove, good, bad and indifferent, young and old, and everything in bearing, you get that average?
Mr. Chase: Yes, sir.
Mr. Call: How does that compare with the cost generally throughout the state, the cost of the care of an acre per year?
Mr. Chase: I think it is about the same, I think it is safe to say that the cost of growing oranges is $1.00 or a little more per packed box.
Commissioner Prouty: You say the cost of growing oranges; what do you include in that, do you mean the care of the land?
Mr. Chase: The cultivation, water and fertilization.
Commissioner Prouty: You make no allowance for the cost of the land?
Mr. Chase: No.
Commissioner Prouty: But simply the expense——
Mr. Chase: The expense per year per acre.
Commissioner Prouty: Which is put onto it, is $1.00 a box?
311 Mr. Chase: Yes, sir.
Commissioner Prouty: That does not include packing?
Mr. Chase: No.
Mr. Call: That does not include any interest on the value of the grove or the money invested in the packing house?
Mr. Chase: No.
Mr. Call: You think that is about the average cost throughout the state?
Mr. Chase: Yes, sir.
Mr. Call: How does the productivity of the grove compare with the time of the former hearing? You or your firm were witnesses on that hearing?
Mr. Chase: I think my father was here, that was in 1904, I think, was it not?
Mr. Call: Yes.
Mr. Chase: The productivity at that time was stated and the figures were arrived at in the same manner that we are getting them

this year, from the Board of Equalization reports and showed a production of 200 packed boxes per acre.

Mr. J. H. Call: Speaking to the Board of Equalization you are referring to the State Board of Equalization for the purposes of taxation?

312 Mr. Chase: Yes, sir.

Mr. J. H. Call: Having official records of returns of groves?

Mr. Chase: Yes, sir; it is the report of the Boards of Assessors all through the state.

Mr. A. F. Call: So that the result during the last five or six years in the business has been to decrease the production per acre?

Mr. Chase: Yes, sir; there has been a steady reduction.

Commissioner Prouty: Mr. Chase, take the same acreage of trees ten years ago, would the production increase or decrease as the tree grows older?

Mr. Chase: It should increase.

Commissioner Prouty: It should increase if properly taken care of?

Mr. Chase: Yes, sir.

Commissioner Prouty: Up to what age do you think it should increase?

Mr. Chase: I was investigating some orchards within two weeks that are twenty-three years old that this year had a full crop of something about four hundred packed boxes per acre.

Mr. Call: What is the rule of an old grove, the actual fact?

313 Mr. Chase: Deterioration.

Mr. Call: What you think is this, that if conditions are all favorable, and if there has been no neglect anywhere that theoretically there should be an improvement?

Mr. Chase: Yes, sir.

Mr. Call: But practically there is not?

Mr. Chase: No, sir.

Mr. Call: Practically——

Mr. Chase: They go back after the fifteenth year; the records will show that they do not produce as much after fifteen years as before.

Mr. Call: Practically the ordinary man cannot get the results out of an old grove that he does out of a young one.

Mr. Chase: He does not do it.

Commissioner Prouty: Is the orange as good off of an old tree as a young one?

Mr. Chase: Yes, sir.

Mr. Call: Have you or your firm discovered yet how to produce good fruit and in paying quantities out of an old grove?

Mr. Chase: No, we have not. We do not know what makes a crop of oranges yet.

Mr. Call: And you have about a million and a half in-

314 vested in the business?

Mr. Chase: Yes, sir.

Mr. Call: And you have not spared any cost or pains to find out, have you?

Mr. Chase: No, we have not. We try a great many things.

Mr. Call: You have been back to the University trying to find out some things about it?

Mr. Chase: Yes, sir.
Mr. Call: And you have been down to Washington and spent several months trying to find out some things about it?
Mr. Chase: Yes.
Mr. Call: And you don't know yet how to make an old grove produce good fruit in paying quantities?
Mr. Chase: No.
Mr. Call: And you don't know yet how to keep them up?
Mr. Chase: No, I don't know yet what produces a crop of oranges.
Mr. Call: But you do know as a practical result that they fall off?
Mr. Chase: Yes, sir.
Mr. Call: You do know that the trees deteriorate as they grow older?
Mr. Chase: Yes.
315 Mr. Call: You know that they are subject to disease?
Mr. Chase: Yes.
Mr. Call: That they die and have to be replaced?
Mr. Chase: We know they have diseases, but nobody knows why they happen or what will cure them.
Mr. Call: Take a grove which comes to bearing, which comes on all thrifty and hangs full of fruit and keeps on say to fourteen or fifteen years old, and in spite of all you can do, or any ordinary man, they begin to go off?
Mr. Chase: Yes, sir.
Mr. Call: After a grove is half neglected for a year how long does it take to bring it up into condition?
Mr. Chase: It takes two or three years; that is, if you ever bring them back; sometimes you don't bring them back at all.
Mr. Call: Will you tell us the average cost of picking a box of oranges in California?
Mr. Chase: I think that the easiest way to get at that is the way they charge when they are picking and hauling by contract, and they charge 7 cents a packed box, I think, to pick the fruit and deliver it at the packing house.
Mr. Call: What is the average cost of packing?
Mr. Chase: 30 cents.
316 Mr. Call: 30 cents is recognized to be the uniform and average cost of packing everywhere?
Mr. Chase: Yes, sir.
Mr. Call: Sometimes it will go a cent or two above or below?
Mr. Chase: Either way.
Mr. Call: But that is the average cost?
Mr. Chase: Yes, sir.
Mr. Call: Pretty nearly fixed and not susceptible of change?
Mr. Chase: No.
Mr. Call: In caring for a grove are those charges you have to pay really fixed charges?
Mr. Chase: They are all fixed with the exception of fertilizer; for instance, your water charge and your cultivation and mechanical handling of the grove are fixed things that have to be done in order to keep your grove up and it costs so much money to do it, it takes so many horses to cultivate a grove so often, and that charge is

fixed; the fumigation of groves varies with localities; the water varies with localities; the fertilizer varies with the personal idea of the owner, and there is a wide variation in that.

Mr. Call: Then the result of our experiences during the last six years, or since this matter was before the Commission before,
317 is that we are producing a little more fruit from double the acreage?

Mr. Chase: Yes, there is just twice the acreage now, I think, that there was in 1904-1905.

Mr. Call: And at a considerably larger cost per box for production?

Mr. Chase: Yes, sir.

Commissioner Lane: How many cars did you ship in 1904?

Mr. Chase: In 1904 there were 10,400,000 boxes shipped of oranges, I believe.

Commissioner Lane: How many does that make in cars? You shipped 40,000 cars last year, how many this year?

Mr. Call: That included lemons.

Mr. Chase: It would be about 25,000 cars of oranges that year.

Commissioner Lane: This last year?

Mr. Chase: No, that was 1904, and last year we shipped about 35,000 cars of oranges on twice the acreage.

Commissioner Lane: Twice the acreage?

Mr. Chase: And increased 40 per cent on an increase of 100 per cent in the acreage.

Mr. Durbrow: Is that twice the acreage of bearing trees?

Mr. Chase: Yes, that is twice the acreage of so-called bear-
318 ing trees as reported by the assessors.

Mr. Norton: How many cars did you say you shipped last year?

Mr. Chase: 35,000.

Mr. Call: You may cross examine.

Cross-examination:

Mr. Norton: You say the shipment last year was on twice the acreage of that in 1904?

Mr. Chase: Yes, sir; approximately.

Mr. Norton: Can you explain why that acreage has increased so rapidly?

Mr. Chase: The acreage that shows in last year of course was the earlier plantings, that is, made five or six years ago, and at that time from 1898 on to 1904, there was quite a heavy planting through California and the trees are just coming now to be of an assessable age; I presume that accounts for the increased acreage.

Mr. Norton: The trees are just coming to the assessable age, you say?

Mr. Chase: Yes, sir.

Mr. Call: This acreage is the bearing acreage, he has stated.

Mr. Norton: Are non-bearing trees non-assessable?

Mr. Chase: No, they are assessed but not recorded in the
319 bearing acreage. The assessors make two reports, one of bearing acreage and one of non-bearing.

Mr. Norton: How much reliance do you place on those figures?
Mr. Chase: They are as accurate as any figures you can get that are gotten in that way, that is, they are fairly accurate.
Mr. Norton: I would like to have you give me your cost of picking one hundred pounds of oranges and lemons?
Mr. Chase: Our cost of picking and hauling——
Mr. Norton: You have not them separate?
Mr. Chase: No, we carry those two together.
Mr. Norton: All right.
Mr. Chase: I will have to figure that out. It is $21.00 per acre and the production per acre is about 10,000 pounds.
Mr. Norton: $21.00 for 10,000 pounds of oranges or lemons or both together?
Mr. Chase: Oranges. We take it by the box, that is the way we handle it. We work by the day and our picking charges are based that way.
Mr. Norton: What for lemons?
Mr. Chase: I don't know.
Mr. Norton: How do you arrive at the cost of picking?
Mr. Chase: Actual cost of labor employed.
320 Mr. Norton: How much does a man pick a day?
Mr. Chase: Our men pick forty or fifty field boxes.
Mr. Norton: How much do you pay your men a day?
Mr. Chase: $1.75, 17½ cents an hour we pay them for the time they work.
Mr. Norton: What is the weight of a field box?
Mr. Chase: 42 to 43 pounds.
Mr. Norton: What does it cost to prune an acre of oranges?
Mr. Chase: We have our pruning cost in what we call our tree care column, that is pruning, fumigation and general tree care, and it runs $12.90 an acre.
Mr. Norton: On oranges?
Mr. Chase: Oranges. These figures are all on oranges.
Mr. Norton: You have none on lemons?
Mr. Chase: No.
Mr. Norton: The tree care includes what, pruning?
Mr. Chase: Pruning, fumigation, and catching gophers——
Mr. Norton: Do you know anything about the different methods of pruning lemons and oranges?
Mr. Chase: No, I don't know anything about that.
Mr. Norton: Do you know anything about the difference in cost of producing oranges and lemons up to the time of picking?
321 Mr. Chase: No, I do not.
Mr. Norton: Can you give any figures on that?
Mr. Chase: No, I cannot give any figures on the lemon business at all.
Mr. Call: Mr. Chase is not a lemon grower.
Mr. Norton: Well I understood he had some lemons?
Mr. Chase: We have some lemon trees, but they are young and we do not count that acreage in at all.
Mr. Norton: What is your acreage of lemons, Mr. Chase?

Mr. Chase: We have 200 acres of lemons.
Mr. Norton: How long have you been putting them out?
Mr. Chase: We made our first planting in 1904, I think.
Mr. Norton: And all that has been put out since?
Mr. Chase: Yes.
Mr. Norton: Did you put out some last year?
Mr. Chase: We budded 100 acres over two years ago now.
Mr. Norton: 100 acres of what?
Mr. Chase: Oranges.
Mr. Norton: Oranges budded to lemons?
Mr. Chase: Yes, sir.
Mr. Norton: Did you bud any oranges over the year before that?
322 Mr. Chase: No, sir.
Mr. Norton: Are you acquainted with the work done by Professor Powell here of the Government Service?
Mr. Chase: Yes, sir.
Mr. Norton: Of what value is that to the orange grower?
Mr. Chase: I don't know as you could figure it in dollars but it is worth many thousands of dollars every year to the orange growers.
Mr. Norton: Did you avail yourselves of the revelations which he made and the systems?
Mr. Chase: We did.
Mr. Norton: And were the results valuable ones?
Mr. Chase: Very.
Mr. Norton: Were they noticeable instantly?
Mr. Chase: Instantly.
Mr. Norton: What was the first thing you did in the line of his suggestions?
Mr. Chase: Care in handling, that is all there is to it.
Mr. Norton: What?
Mr. Chase: In handling, in the care.
Mr. Norton: What change in handling?
323 Mr. Chase: In the care that is used in picking oranges.
Mr. Norton: Picking them?
Mr. Chase: Yes, sir.
Mr. Norton: To prevent bruises?
Mr. Chase: Yes, sir.
Mr. Norton: Professor Powell showed you that wherever an orange was bruised in the least the blue mold set in at the point of injury?
Mr. Chase: It was subject to decay.
Mr. Norton: That was found to be the case in transit as well as before in storage?
Mr. Chase: Anywhere; it did not always decay but it was subject to it.
Mr. Norton: It started it?
Mr. Chase: Yes, sir.
Mr. Norton: And what other suggestion has been availed of by you in your business?
Mr. Chase: Simply the care all through from the time the fruit leaves the tree until it is packed.

Mr. Norton: Could you tell in a lump way what advantage that education has been to you?

Mr. Chase: Why, I could state that before we took up this
324 method the amount of decay we used to have, and what we have now.

Mr. Norton: What amount of decay had you before?

Mr. Chase: We had as high as 25 to 40 per cent decay.

Mr. Norton: At what point was this decay?

Mr. Chase: At point of delivery, at eastern points.

Mr. Norton: What is your decay now at eastern points?

Mr. Chase: Nothing.

Mr. Norton: Can you tell anything about your decay in the warehouse and packing houses?

Mr. Chase: No decay in the warehouses.

Mr. Norton: None at all?

Mr. Chase: No.

Mr. Norton: Did you have any before?

Mr. Chase: No, the decay does not come there. They are handled quickly, you know.

Mr. Norton: How old are the oranges of which you have fifteen hundred acres in bearing?

Mr. Chase: We have 750 acres of an average age of eight years.

Mr. Norton: How old are your oldest trees?

Mr. Chase: We have trees eighteen years old.

Mr. Norton: Are they bearing well?

Mr. Chase: Yes, sir.

325 Mr. Norton: How well compared with the seven and a half year old trees?

Mr. Chase: They will bear between two and three times as much.

Mr. Norton: Did I understand you correctly that 400 boxes came from an acre in the grove, twenty-three years old you spoke of?

Mr. Chase: That was not our grove, that was one of the groves I investigated a week or two ago.

Mr. Norton: Then according to your statement the older your trees are the better results you are getting from them?

Mr. Chase: Not in all cases, we have some old groves that do not respond like this one I happened to mention particularly.

Mr. Norton: Have you some old groves that are an inferior kind of trees?

Mr. Chase: No, the trees are all right, but they do not produce.

Mr. Norton: Have you some that are more poorly located than others?

Mr. Chase: Yes, I presume we have, but that does not make any difference on the production.

Mr. Norton: Does not the location have anything to do with the production of oranges or make any difference?

326 Mr. Chase: No, I cannot say on our acreage that it does.

Mr. Norton: Do you suffer from frost at Riverside?

Mr. Chase: Yes, sir.

Mr. Norton: On all your grounds?

Mr. Chase: No, sir; not on all of them.

Mr. Norton: In low places?

Mr. Chase: I think possibly we suffer as much in Riverside as they do anywhere.

Mr. Norton: Would not the lands where frost strikes you produce less?

Mr. Chase: No, we ship less fruit from it sometimes, but other times we get our heaviest stock from the low lands.

Mr. Norton: I understood you to say it costs $140.00 an acre to keep up, per year?

Mr. Chase: Yes.

Mr. Norton: Have you a statement showing of what that consists?

Mr. Chase: Yes, sir.

Mr. Norton: Will you read the items please?

Mr. Chase: In our irrigation charge, we distribute the water on the land, that is, we make furrows and put the water on and charge that up under the head of irrigation; that amounts to $35.65.

327 Cultivation, $20.47.

Mr. Norton: How much of the water amount is water assessment, which you have given?

Mr. Chase: We cannot segregate that because we are under several systems; some of it is assessments and some we pay by the inch. Picking and hauling, $21.35; pruning and fumigation, $12.90; fertilization, $33.75; taxes, $7.25; overhead charges, $10.00.

Mr. Call: What do you mean by overhead charges, foremen and so forth?

Mr. Chase: Superintendence, and work not charged directly to any one place.

Mr. Norton: Is your water cost at Riverside heavier than the ordinary cost?

Mr. Chase: No, I think not, from my best information.

Mr. Norton: How about water? You have water at Corona?

Mr. Chase: Well, it costs at Corona, $24.00 an acre; personally we pump water from the main line at an extra cost above that, so our water cost alone there is something like $30.00 at Corona, without any labor.

Mr. Norton: The costs you are giving are higher than the ordinary costs per acre in California, are they not?

328 Mr. Chase: No, not much higher.

Mr. Norton: It is some higher?

Mr. Chase: There are some places where it costs even more than this, in districts.

Mr. Norton: Don't you fertilize more expensively and liberally than some other growers you know of?

Mr. Chase: No, I think we are rather light on fertilizer.

Mr. Norton: Do you know personally of any lemon groves that have been budded back to oranges?

Mr. Chase: Yes, sir.

Mr. Norton: Do you know why that was done?

Mr. Chase: No money in it.

Mr. Norton: Do you know why there was no money in them?

Mr. Chase: My impression is there is no money in the lemon business for small acreage.

Mr. Norton: Because of want of facilities for handling them in that locality?

Mr. Chase: There are facilities for handling them but a man with ten acres, he has to pick his fruit practically ten times a year; it is a constant bill of expense with very little result.

Mr. Norton: I understand the lemon business is for a well-to-do man?

329 Mr. Chase: No, I think it is on a large proposition.

Mr. Norton: Yes, a big man's business. Why are you an independent seller?

Mr. Chase: Oh we got started that way, I guess.

Mr. Norton: Well people ought to improve as they go along; is that the only reason you can give?

Mr. Chase: Well, I don't know of any other reason, except——

Mr. Norton: That is all, I will not press you for an answer on that.

Mr. Durbrow: As I understand it one of the reasons you are independently engaged in this business is because you are what we call a high cultivator, that is, you endeavor to produce the very highest grade of fruit; is not that a fact?

Mr. Chase: Well, we intend to produce good oranges.

Mr. Durbrow: You put it on the market under your own name and take some pride in the fact that you obtain high prices?

Mr. Chase: Yes, I don't know that we take any more pride than other people do.

Mr. Durbrow: I understand, but that has been your aim in your business?

Mr. Chase: Yes, sir.

Mr. Durbrow: And you have established a reputation for

330 producing the very highest quality of fruit?

Mr. Chase: Yes, sir.

Mr. Durbrow: You say you produce about 100 boxes per acre?

Mr. Chase: No, I say that is the average production in California. Our production is a little higher than that.

Mr. Durbrow: About what is your production?

Mr. Chase: About 150 boxes last year.

Mr. Durbrow: Is that a general average?

Mr. Chase: Yes, that is a general average for our property.

Mr. Durbrow: For your land?

Mr. Chase: Yes, sir.

Mr. Durbrow: And I would like to ask you if the number of boxes you produce per acre represents the very highest quality of the oranges grown in California?

Mr. Chase: I think it is as good an orange as is grown in California.

Mr. Call: You could not make him confess anything else in this case.

Mr. Chase: I will admit that.

Mr. Durbrow: I am glad to have you admit it and I think it is

a fact, but what I am endeavoring to show is you have been
331 shipping nothing but the very highest quality of fruit to the East, and you would not do that.

Mr. Chase: I don't know whether we would or not.

Mr. Durbrow: Let me ask you this question. Of this 150 boxes per acre that have been produced on your land, that has been the highest quality, or have you different grades?

Mr. Chase: We have different grades.

Mr. Durbrow: How many of those 150 boxes would be represented by the highest grade of fruit?

Mr. Chase: Well, they come from different locations. The grade depends a good deal on the location in our section; certain sections where we grow a very fine, silky fruit and not far away one that is a little coarser or pulpy, as we call it.

Mr. Durbrow: Have you any objection to telling what is the average net price per box you have received on your fruit?

Mr. Chase: Last year our net price per box, f. o. b. California was $1.94.

Mr. Durbrow: And what did you receive over and above all expenses of every kind as a net profit?

Commissioner Prouty: He has given you all the figures, has he not? He has given you the cost of packing and has now given you the amount received.

332 Mr. J. H. Call: It is all in there.

Mr. Durbrow: He has given us the cost and what his net profit is f. o. b. California.

Mr. J. H. Call: He has given all the items of cost.

Mr. Durbrow: If he has no objection, I would like to have him tell me what net profit he received last year per box of fruit after all expenses were paid, marketing, transportation and everything else?

Commissioner Prouty: I only wanted to save a little time. The figures are all there from which you can figure yourself.

Mr. Durbrow: If he will answer this one question——

Mr. Chase: I made the statement it cost us 90 cents a box to grow fruit last year, and our return for it, f. o. b. was $1.94. Take 60 cents out of that for the packing, leaves $1.64 net for the fruit.

Mr. Durbrow: I would like to ask you if these 10,000 acres of bearing trees in Riverside are in full bearing?

Mr. Chase: Yes, sir; they are considered in full bearing.

Mr. Durbrow: In arriving at these figures here as to the average number of boxes produced per acre and so forth in California, you say you have taken the figures of the State Board of Equal-
333 ization?

Mr. Chase: Yes, sir.

Mr. Durbrow: The figures which are contained in this book (indicating.)

Mr. Chase: Well, the report they made.

Mr. Durbrow: I just wanted to know the source of your information.

Mr. Call: Not that book.

Mr. Chase: Not that book, but the reports they make from year to year. No that is not the statement. It comes out in pamphlet form; this is the form it comes out in (indicating.)

Mr. Durbrow: Now one further question, Mr. Chase. Do you refrigerate any of your shipments?

Mr. Chase: Yes, sir.

Mr. Durbrow: What percentage of your shipments move forward under refrigeration?

Mr. Chase: Well, that again depends on the weather, at this end. We start in when the weather gets very hot here, usually about the first of May or latter part of April.

Mr. Durbrow: Can you tell us approximately the percentage moved by you in a year that are refrigerated?

Mr. Chase: I should think we refrigerated 20 to 30 per cent.

Mr. Durbrow: That is all.

334 Mr. Norton: Why have you planted this acreage of lemons you testified to a moment ago?

Mr. Chase: Desiring a business that runs the year around, Mr. Norton.

Mr. Norton: Had you looked into the profits?

Mr. Chase: Just in a general way, that Corona is supposed to be a lemon section, and we planted them at Corona.

Mr. Halsted: Did I understand you to say that this estimate of a box and a half of the tree or 150 boxes per acre, was based on 750 acres of your grove?

Mr. Chase: Yes.

Mr. Halsted: And the average age was seven and one-half years?

Mr. Chase: Eight years.

Mr. Halsted: What is the age of the youngest trees in that grove?

Mr. Chase: I think six years old, between six and seven.

Mr. Halsted: They would just be coming into what you call bearing age?

Mr. Chase: Yes, sir.

Mr. Halsted: What are the oldest trees?

Mr. Chase: Eighteen years, I think the oldest are.

Mr. Halsted: Are they seedlings or navels?

335 Mr. Chase: Navels.

Mr. Halsted: What did your eighteen — old trees produce last year?

Mr. Chase: I gave that I think. They produced, I think, about 300 boxes per acre.

Mr. Halsted: Do you call that a fair crop?

Mr. Chase: Yes, sir; that is a good crop.

Mr. Halsted: How many acres were there of those?

Mr. Chase: Only ten acres of those.

Mr. Halsted: Do you consider a ten year old navel tree that only produces a box and a half a good crop?

Mr. Chase: No.

Mr. Halsted: What is a good crop for a bearing navel tree ten years old?

Mr. Chase: 200 pounds to the tree, that would be less than three packed boxes, two and a half packed boxes.

Mr. Halsted: You would call that an average crop?

Mr. Chase: Yes, I would call that a very good crop.

Mr. Halsted: You would call that a very good crop?

Mr. Chase: Yes, sir.

Mr. Halsted: What would be a fair average crop?

Mr. Chase: The average crop, I dont know, I think a box
336 and a half is a pretty good average for trees of that age.

Mr. Halsted: For trees ten years old?

Mr. Chase: Yes.

Mr. Halsted: Coming out on an average how many years?

Mr. Chase: I think that is the general experience in Riverside, with the best bearing trees; some run higher than that, but a good many lower; but a box and a half would be a good average.

Mr. Halsted: Where they run lower it would certainly not be considered a good, well cared for grove?

Mr. Chase: Well, as I stated I don't know why an orange grove bears.

Mr. Halsted: I know, but you would not consider a tree that only yielded that amount a good tree?

Mr. Chase: I know groves that are cared for as well as any in Riverside that have no oranges on them this year at all. They are well located and well cared for, but simply have no fruit on them at all.

Mr. Halsted: A year of that kind would not happen once in five years, would it?

Mr. Chase: I don't know.

Mr. Halsted: Well, has it in your experience?

337 & 338 Mr. Chase: Yes, there are always well cared for groves that fail to produce.

Mr. Halsted: One particular year?

Mr. Chase: Take a year, we have always supposed that a navel orange was a regular producer and you could count on them producing year after year, but they do not do it, when you come right down to it.

Mr. Halsted: But it is rare that they fail two years in succession, is not that true?

Mr. Chase: Well, I don't know as to that.

Mr. Halsted: What is the average price per acre for orange groves?

Mr. Chase: The average price for bearing groves?

Mr. Halsted: Yes, good young trees, an orchard, say ten years old.

Mr. Chase: $1250.00 to $1500.00 an acre.

Mr. Halsted: Orchards have sold as high as $2000.00?

Mr. Chase: Orchards have sold as high as $2000.00 and as high as $3000.00.

Mr. Halsted: In Riverside?

Mr. Chase: Yes.

Mr. Halsted: What kind of orchards are those, navels or
339 Valencias?
Mr. Chase: Seedlings.
Mr. Halsted: How old?
Mr. Chase: 20 years old at that time I think.
Mr. Halsted: Is it not a fact that navel oranges have sold at $2000.00 an acre?
Mr. Chase: $2000.00, I think, is the highest price I ever knew of a navel orchard selling at.
Mr. Halsted: And Valencias?
Mr. Chase: About the same price.
Mr. Halsted: And that is within two years?
Mr. Chase: Yes, groves have always sold at the same price ever since I have been in Riverside, twenty years, that is, the same class of property sold for the same price fifteen years ago as would sell now.
Mr. Halsted: A good many of the old groves in Riverside have been allowed to deteriorate?
Mr. Chase: Well, they ceased to bear; I don't know whether they were allowed to deteriorate, but they just did it.
Mr. Halsted: They do not look as thrifty and healthy as they did ten years ago?
Mr. Chase: Well, they look all right.
340 Mr. Halsted: But is not that true, that a good many of them do not look thrifty?
Mr. Chase: Yes, sir.
Mr. Halsted: And when you speak of the general average you are taking into consideration all those groves?
Mr. Chase: That is the only way we can get at an average, is to take the general industry.
Mr. Norton: Have you given any attention to the subject of pre-cooling and pre-icing?
Mr. Chase: No, sir; we have only had one or two cars pre-cooled.
Mr. Norton: What were the results?
Mr. Chase: Not particularly good.
Mr. Norton: When were those pre-cooled?
Mr. Chase: I think my impression is that two years ago we had some pre-cooled.
Mr. Norton: Do you remember their destination?
Mr. Chase: New York.
Mr. Norton: Were they re-iced in transit?
Mr. Chase: I am not positive of that. I have not that data here.
Mr. Norton: You gave a higher market price for some
341 seedling lands in Riverside?
Mr. Chase: Yes, sir.
Mr. Norton: Are the seedlings regarded as a good kind of oranges?
Mr. Chase: No, this was some time ago; he asked for——
Mr. Norton: That was for my own information. I supposed seedlings were an inferior kind of orange.
Mr. Chase: Well, they pay pretty well.

Mr. Norton: But they are not up to the navels and Valencias?
Mr. Chase: No.
Mr. Norton: Have you many seedlings at Riverside?
Mr. Chase: Yes, quite an acreage of seedlings.
Mr. Norton: Could you tell about how much that is relatively, is it one-third of the Riverside acreage or a quarter?
Mr. Chase: No, I should not think it was more than 20 per cent.
Mr. Norton: And that acreage has gone in with your estimate?
Mr. Chase: Yes, sir.

Redirect examination.

Mr. Call: A good share of the late plantings of oranges has been Valencias, summer and fall producing crops?
Mr. Chase: Yes, sir.
342 Mr. Call: A different variety of fruit in order to make an all year round product?
Mr. Chase: Yes.
Mr. Call: There has not been any such large plantings of navels as there has been of Valencias?
Mr. Chase: It might be about half and half.
Mr. Call: But I mean in proportion to the existing acreage, the proportion is much larger of Valencias?
Mr. Chase: Yes, sir.
Mr. Call: Are the Valencias seedlings?
Mr. Chase: Yes, they are seedlings.
Commissioner Prouty: You ship oranges under ventilation and under refrigeration?
Mr. Chase: Yes, sir.
Commissioner Prouty: You make no pre-cooled shipments?
Mr. Chase: No, sir.

Commissioner Prouty: Would you think that pre-cooled shipments ought to go under the same rate as oranges under ventilation?

Mr. Chase: I don't know why, if a man pre-cools a car of fruit, he should not ship it at the same rate.
Commissioner Prouty: You as a shipper who makes no
343 use of pre-cooled shipments, would have no objection?
Mr. Chase: No.
Commissioner Prouty: You see no discrimination against you?
Mr. Chase: No.

(Witness excused.)

Commissioner Prouty: We will now take a recess until two o'clock.
The hour of 12:45 having arrived the hearing was adjourned until two o'clock p. m.

344 After Recess.

Mr. Call: Before I call a witness, in response to the notice which was served upon us by the defendants to produce papers, we have some here, and I thought perhaps they would like to be ex-

amining them while we are proceeding. We will produce at this time the following papers, and we will ask that they be returned when counsel are through with them because they are the only files we have in some of our associations. We have the report here of the Indian Hill Association made annually from the year 1899 to the present time.

Commissioner Prouty: You may pass them to Mr. Durbrow.

Mr. Call: And the reports of the Eurta and Monrovia Exchanges from 1899 to the present date; and the report of the San Dimas Orange Growers Association from 1900 to date; and the report of the Glendora Association. These are in a little different form, however, not being printed, from 1900 to date.

Commissioner Prouty: Mr. Norton, for what purpose do you desire these reports?

Mr. Norton: It shows the net paid per hundred pounds to the grower.

Commissioner Prouty: Well, for that purpose you have
345 enough reports. Have you something else?

Mr. Call: We have the Whittier Association reports.

Mr. Durbrow: We would like to get as many as we can, that they are able to furnish.

Mr. Call: I would say that the report that we gave from the general exchange covers all these and more. It covers not only these but others.

Commissioner Prouty: I understand that is an average, but they desire to look at the details.

Mr. Call: Yes. We have all that they have demanded.

Mr. Norton: Those are not all that we demanded of the association.

Mr. Call: Those are all we have now at hand to deliver, but we may get some others, one or two others I think we have in course of preparation and there are two or three you asked for that do not make reports. They are individuals and not associations and do not make reports.

Mr. Norton: What are they?

Mr. Call: I could not say now. W. H. Jamison, who is he——

Commissioner Prouty: We are not going into this question of receipts for oranges in great detail, because it would not be helpful in fixing this rate one way or the other.

346 Mr. Call: We have here in response to the request this statement of the prices received month by month, year by year, in all of the markets named yesterday.

Commissioner Prouty: In what years?

Mr. Call: It covers 1898 and 1899, each month in the year. That was what was asked for, and covering each different point. It was asked for yesterday, but this morning in the notice, perhaps inadvertently, there were three or four points added which were not mentioned.

Mr. Norton: We will omit those.

Commissioner Prouty: You may pass those over.

Mr. Norton: Did I not give New York yesterday?

Mr. Call: It was not in the list yesterday.

Mr. Norton: We ought to have that, we can get them in time, but it is a great deal of work. We would like to have New York.

Mr. Call: We can get that for you.

Commissioner Prouty: It seems to me you ought to have New York.

Mr. Call: We can furnish that. We offer this at this time.

(A paper offered in evidence, marked Complainant's Exhibit Number 21, received in evidence March 24, 1910, and same is attached hereto.)

347 Mr. Call: Those are grouped by territory as described by the witness Woodford and at the points named by counsel for the Defendants. We have here the reports of the State Board of Equalization from which we deduced our figures, and we submit these for examination and if there is any criticism, we would be glad to have it before the Commission.

Mr. Norton: We do not care to examine those.

Mr. Call: We have here the report of the Redlands Fruit Association also.

Mr. Halsted: In this statement I see you state the f. o. b. price of those. That is, of course, f. o. b. California?

Mr. Call: F. o. b. California and by the box.

H. B. CHASE resumed.

Mr. Call: Some mention was made in the cross examination as to prices received for orange groves recently in the sections with which you are acquainted. I will ask you whether these sales which you have mentioned were for purely commercial purposes or whether any of them are residential propositions?

Mr. Chase: I do not think that I mentioned any recent sales for large prices for either purpose. They asked me the value of a ten year old grove and I told them $1250 to $1500.

348 Mr. Call: That was made some time ago?

Mr. Chase: That was made some time ago.

Mr. Call: As these colonies grow and develop in size and develop are there certain sections of them that become more valuable for residential purposes?

Mr. Chase: Yes, sir.

Mr. Call: And these extensions of the trolley lines out from Los Angeles have some effect on the values also?

Mr. Chase: Yes, sir.

Mr. Call: For purely commercial purposes, outside of any residential advantages, has there been any marked change in the value of groves in the last five to ten years?

Mr. Chase: No material change.

Mr. Call: What do you say as to the value now as compared with when we took this testimony before of your best commercial groves in the Riverside district?

Mr. Chase: I should think it would be just the same or virtually the same.

Mr. Call: Some of these older groves that were planted in close to town have now become lot property, have they not?

Mr. Chase: Yes, sir.

Commissioner Prouty: Mr. Call, let us not spend any more
349 time on that, please.

Mr. Call: Very well. I think in your testimony in one place you inadvertently stated the cost of packing to be 60 cents.

Mr. Chase: 30 cents.

Mr. Call: You meant 30 cents?

Mr. Chase: 30 cents, yes, sir.

Commissioner Prouty: He made the correction from the deduction substantially, although he used the word "sixty."

Mr. Call: That is all.

Mr. Norton: I would like to ask you another question about pre-cooling and how far your inquiry into the matter of pre-cooling extends?

Mr. Chase: Oh, conversations principally with Powell and the man who was out here from the Department of Agriculture, Mr. Dennis.

Mr. Norton: You stated to Commissioner Prouty that you would have no objection to other people pre-cooling, so far as you are concerned?

Mr. Chase: No, sir.

Mr. Norton: Did that answer relate to pre-cooling and preicing or pre-cooling alone?

Mr. Chase: Either way; it makes no difference to us what
350 they do with the fruit.

Mr. Norton: Did you feel that you had studied enough into the subject to know whether you would pre-cool in the future or not?

Mr. Chase: We looked into it enough to decide that we would not do it in our own pre-cooling plant, although in our opinion that is the way to do it, if you are going to pre-cool.

Mr. Norton: Why do you think it should be done by yourselves?

Mr. Chase: Because the minute the box is packed in the packing house you can shoot it into the cold storage house.

Mr. Norton: How long does it take to pre-cool them, Mr. Chase?

Mr. Chase: The experience has been from twenty-four to forty-eight hours.

Mr. Norton: Do you know how long it takes the carrier to pre-cool in the car?

Mr. Chase: I do not.

Mr. Norton: As I understand from your testimony, oranges that are carefully and properly packed and handled are not subject to decay, whether they are under ice or not?

Mr. Chase: No, sir.

Mr. Norton: They may move under ventilation at all seasons of the year?

351 Mr. Chase: The object of icing in a large measure is appearance; it gives the fruit a fresher appearance on arrival at destination.

Mr. Norton: The fruit is not iced for preservative reasons?
Mr. Chase: No, sir; not in our case.
Mr. Norton: Properly handled fruit will not decay?
Mr. Chase: Properly handled fruit will carry at all seasons of the year.

(Witness excused.)

Mr. Call: Is Mr. Leeds here?
Commissioner Prouty: He does not seem to be here.
Mr. Call: In this matter we are passing now to the question of refrigeration and pre-cooling and Mr. Matthews of Chicago has given the matter more study than I have and he will examine the witness. He would like to examine Mr. Leeds.
Commissioner Prouty: He does not seem to be here.
Mr. Call: And Mr. Seagrist?
Commissioner Prouty: He does not seem to be here. Is Mr. Seagrist here?
Mr. Durbrow: He is not in the city today, but he will be here. I told the gentlemen I was going to use him as a witness on Saturday, but I was advised this morning that they wanted to call
352 him. I will try to have him here tomorrow.

J. S. EDWARDS, called as a witness, being duly sworn, testified as follows:

Direct examination:

Mr. Matthews: Where do you reside?
Mr. Edwards: At Redlands.
Mr. Matthews: What is your business?
Mr. Edwards: An orange grower.
Mr. Matthews: How long have you been in that business?
Mr. Edwards: Twenty-nine years.
Mr. Matthews: Are you connected with any exchange?
Mr. Edwards: With the Redlands Highland Exchange.
Mr. Matthews: Are you Manager of that?
Mr. Edwards: I am not.
Mr. Matthews: What attention, if any, have you given to icing and pre-cooling cars in the last two or three years?
Mr. Edwards: Following Mr. Powell's report or partial reports and investigation, I was impressed with the importance of pre-cooling the oranges, introducing refrigeration into the oranges before they were shipped, rather than by introducing it gradually while they were rolling. I visited the plant, one experimental plant being in operation at San Bernardino; in fact our association turned in a
353 few cars for experimental purposes at that plant. I also visited some other plants, where individual experiments were being made. I was immediately impressed that the right way to pre-cool oranges—that it was a very good thing to do, a very important thing to do, and that the way to do it was immediately after the oranges came off the tree, for the reason that Mr. Powell had explained and we had come to understand, that the decay, most of

it, which occurs to the oranges in transit, was due to three causes: injury, mechanical injury, heat and moisture. Without the injury the orange would stand considerable heat and would be not so badly affected by moisture; but with mechanical injury and heat and moisture added the decay was very rapid. Now when the oranges come off the trees the temperature is sometimes above 90 degrees, and you put them in a car in that hot condition and fill the bunkers full of ice, the ice melts rapidly, naturally; the oranges cool accordingly. Now it takes about the equivalent of three tons of ice, gradually and properly applied, to reduce a car of oranges from an average field temperature to a temperature of from 33 to 35 degrees. Now the melting of that ice in the first place under the old regime or method of refrigeration, took two days after the orange was picked
354 from the tree practically before it came under the influence of ice at all. Then naturally as the oranges were packed in boxes and were scattered through the car and the ice in the ends of the car, it was found also by Mr. Powell's experiment that before the orange became thoroughly cooled it would be more than half way to the market and in some cases to the markets. Now by putting the oranges in cold storage immediately when they are picked or packed, we can get them under the influence of a very low degree of temperature in twenty-four hours. After they are picked they will be under the influence of the low temperature and in an additional forty-eight hours we will bring the entire package of oranges, practically every orange in the package, down to 32 to 35 degrees, about where we think it ought to be, and also lower if it were wise to do so. Now having the oranges in that condition we began to realize that we could hold them then in case of a car shortage, which sometimes occurs; under the old regime, we having no rooms to store, nor no cold storage facilities, if there was a car shortage, and we did not get our cars when ordered, we were sometimes caught with a large amount of fruit in the house and it had to be packed up and we would make our demands sometimes several days before we
355 would get a chance to empty the house; this involved us in a loss, but of course we put in claims which were contested and a part of which we got recovery for, and there was loss all around. With the pre-cooling and cold storage facilities, we are prepared in the first place to put every car of fruit in the best possible condition for transportation, and then in case of a car shortage or an accident or anything for any reason, we can accumulate the oranges in our house. Now in order to operate a plant of our capacity, about seven cars a day, it requires six compartments, or at least we find that is most convenient, and these six compartments, which are adjusted to our needs, will store about twenty-four cars of oranges, giving us a considerable latitude to protect ourselves and the railroads against loss. Now having satisfied ourselves of the value of the service by careful investigation, we built our plant, as I have anticipated in what I have stated, and our first oranges shipped under this method were shipped in April, 1908.

Commissioner Prouty: Where is your plant?

Mr. Edwards: It is about seven miles north, or five miles north

of Redlands, seventy miles east of Los Angeles, at Highland, a little shipping station.

Commissioner Prouty: How did you happen to locate your
356 plant there?

Mr. Edwards: We located the plant there because my orchard's interests were there personally and my associates were pleased with the location——

Commissioner Prouty: Are all the oranges which are pre-cooled at your plant drawn in by wagon?

Mr. Edwards: Yes, sir.

Commissioner Prouty: None of them brought in by train?

Mr. Edwards: None so far.

Commissioner Prouty: You say you have a capacity of about seven cars a day?

Mr. Edwards: About seven cars to pack and pre-cool.

Commissioner Prouty: About how much does a plant of that sort cost approximately, Mr. Edwards?

Mr. Edwards: Well, our plant is rather an expensive one, but I suppose to build it independent of our packing house, the pre-cooling and pre-icing plant independently built, would cost about fifty thousand dollars.

Commissioner Prouty: Do you make your own ice?

Mr. Edwards: We make our own ice.

Commissioner Prouty: Do you make ice or do you cool your plant by some refrigerating process otherwise than by making ice?

357 Mr. Edwards: We pre-cool the fruit in the same way that we make the ice, but with different machines.

Commissioner Prouty: And then you make the ice for the cars?

Mr. Edwards: We do.

Commissioner Prouty: Do you cool the car before you put the fruit in?

Mr. Edwards: Well we cool it but that don't amount to much.

Mr. Call: We have two of these plants in the course of being constructed and one of our ideas in so earnestly requesting the Commission to come here was to be acquainted with this proposition, because it is a new proposition which probably has not entered into your consideration heretofore, and we cannot give you an idea of it any way except by showing the Commission. We would be pleased to take the attorneys and representatives of the railways with us, with the Commission, and furnish conveyances some day this week and go out and see them.

Commissioner Prouty: Well, we will hear the testimony first and consider that afterwards.

Mr. Matthews: In former years there was considerable decay was there not, in the shipment of oranges?

Mr. Edwards: There was.

Mr. Matthews: Did that lead to a governmental investiga-
358 tion by the Department of Agriculture?

Mr. Edwards: It did, under the supervision of Mr. Powell.

Mr. Matthews: Did they make a report?

Mr. Edwards: They did.

Mr. Matthews: Briefly stated, what was the conclusion of that report?

Mr. Edwards: That if oranges suffered no mechanical injury——

Mr. Durbrow: I think the report speaks for itself and I would rather have——

Commissioner Prouty: Yes, Mr. Chase has already stated in a general way what a valuable discovery Mr. Powell made and the report probably states more in detail. Would it not be better to introduce the report?

Mr. Matthews: Yes, we intend to do that.

Mr. Norton: May I suggest, we have leave to refer to those, they being government documents and not introduce them?

Commissioner Prouty: If that will answer the purpose, that will be satisfactory.

Mr. Matthews: Yes.

Mr. Norton: All the reports of Professor Powell.

Mr. J. H. Call: I would like to have it understood that either side may refer to any of the public documents published in pur-

359 suance of law.

Commissioner Prouty: Some reference should be made to the document here, and of course the document referred to should at some time be called to the attention of the other side. We will go as far as we have now. This document has been produced here and may be referred to by either party.

Mr. Matthews: When was that plant of yours constructed, Mr. Edwards?

Mr. Edwards: In the spring of 1908.

Mr. Matthews: When did you commence the shipment of fruit under pre-cooled and pre-iced cars?

Mr. Edwards: In April.

Mr. Matthews: How many cars did you ship during 1908?

Mr. Edwards: 91 cars, I think it was.

Mr. Matthews: Have you the numbers of those cars?

Mr. Edwards: I have.

Commissioner Prouty: Well, now, we do not want to go into this in detail.

Mr. Matthews: I just wanted to show the destination.

Commissioner Prouty: Just let the witness state what destination these cars went to and what the general results of his experience are.

360 Mr. Matthews: Where were those 91 cars destined to?

Mr. Edwards: All over the United States, everywhere.

Commissioner Prouty: Did you ship cars to Boston?

Mr. Edwards: Boston, New York, Providence, Philadelphia, Albany, Kansas City, Chicago, Cleveland, Seattle——

Commissioner Prouty: Was there any icing after the initial icing?

Mr. Edwards: None; at least, we have no evidence of any.

Mr. Matthews: Under what instructions were those cars moved on the waybills?

Mr. Edwards: Do not re-ice in transit.

Mr. Matthews: Anything else?

Mr. Edwards: Plugs in vents closed, sealed to destination.

Mr. Matthews: Did it say pre-cooled, or anything of that kind?

Mr. Edwards: Usually. When the shipments first began to move we did not exactly know and were not instructed what way bill instructions to give. Finally we came to a very definite form, but in the beginning we simply said, do not re-ice, vents closed. Then we added the words, pre-cooled, do not re-ice.

Commissioner Prouty: Were you advised by your consignee as to whether the car had been re-iced or the vents opened, so that you know whether it went through in that form?

361 Mr. Edwards: We have a system of inspection all along the road; we have a system of inspection all along as far as Chicago and we have all their reports and have examined them and could find no clew of ice having been introduced. It appears, however, in one or two instances, as if ice may have been introduced beyond the river, that is, beyond the Missouri without our knowing it. It looks a little that way, although we have no evidence of it.

Commissioner Prouty: You may state now in what condition your shipments went through.

Mr. Edwards: The oranges arrived in first class condition, no decay except in an occasional instance and a small amount of decay particularly in the low grade stuff, what we call our standards, that are not very sound when we ship them. A number I think about twenty of these cars, were diverted to different places, and one or two were diverted twice.

Commissioner Prouty: Do you know about how many days they were in transit, take those that went to New York or Boston, probably a dozen days?

Mr. Edwards: Yes, but I have not it here in mind. It is here and I can show it to you.

Commissioner Prouty: What time of the year did you say you began to use these pre-cooled shipments?

362 Mr. Edwards: The iced and pre-cooled shipments began to move early in April. I will say that we pre-cooled a number of cars in March and forwarded them without ice, and vents closed to Las Vegas, and standard ventilation beyond there, because we deemed it unnecessary to ice when the weather was cold in the East, the pre-cooling carrying the oranges past the desert and hot part of the route, and then depending on ordinary ventilation beyond there.

Mr. Matthews: In what condition did these cars arrive?

Mr. Edwards: All in first class condition.

Mr. Matthews: Have you a statement showing the quantity of ice in the bunkers of those cars when they reached their final destination?

Mr. Edwards: We have not a compilation, but we have a report on each individual car. In some cases there was no report, but so far as reported they ran about this way:

Chicago ..... one-half
St. Paul ..... one-half
St. Paul .....one-half

Mr. Matthews: What does that mean?

Mr. Edwards: Bunker half full. In one case one bunker was a little more than the other.

St. Louis ..... one-quarter
363 Jersey City, New York ..... one-quarter
Boston ..... one-third
Cleveland ..... one-quarter
St. Louis, diverted to Cairo..... ——
Chicago ..... two-thirds

Commissioner Prouty: How much do the bunkers of the cars hold?

Mr. Edwards: Estimated about nine thousand pounds, four and a half tons.

Commissioner Prouty: You put the bunkers full?

Mr. Edwards: Yes, but by putting in solid ice, we get in more ice.

Commissioner Prouty: About how much ice?

Mr. Edwards: As high as three tons, that is six thousand pounds—wait a minute, twelve thousand pounds, six tons, three tons at each end.

Mr. Matthews: Did the railroads assess any charges against those shipments?

Mr. Edwards: Yes, they assessed full charge.

Mr. Matthews: Refrigeration charge?

Mr. Edwards: The full refrigeration charge.

Mr. Matthews: Did they assess charges on those which were
364 merely pre-cooled and not pre-iced?

Commissioner Prouty: There is no claim for reparation in this case?

Mr. Matthews: Yes, the petition prays for reparation in this case and there is quite a large sum.

Commissioner Prouty: Well, we will not go into that now, we will go into that later. You may file, if you have not already done so, a statement or a list showing the cars with respect to which you claim reparation.

Mr. Matthews: We have already prepared that.

Commissioner Prouty: But we will proceed no further with that proof now.

Mr. Matthews: This pre-cooling plant is operated in connection with your packing house, is it not?

Mr. Edwards: It is.

Mr. Matthews: How many acres can you take care of, packing and pre-cooling?

Mr. Edwards: As at present equipped we figure that we have a capacity of about one thousand acres or one thousand cars. That would mean more, because we figure on being able to take care of our orchards as they develop into heavier bearing.

Mr. Matthews: What do you say the addition to that pre-
365 cooling plant of your packing house cost?

Mr. Edwards: Including the ice making it really stands us

on our books about sixty thousand dollars, but I testified that it might be constructed independently for less money.

Mr. Matthews: How many cars does your packing house take care of in a year?

Mr. Edwards: We are equipped to take care of about one thousand cars.

Mr. Matthews: What can you pre-cool your shipments for per car, if you pre-cool all that is necessary to pre-cool, handled through your packing house?

Mr. Edwards: I don't know that I have figured it out in that way. I estimate that we can do it for about 5 cents a box.

Mr. Durbrow: How much?

Mr. Edwards: About 5 cents a box.

Mr. Matthews: Does that include all the items of cost, labor, materials and so forth?

Mr. Edwards: I estimate that it does.

Mr. Matthews: Do you include interest on your investment?

Mr. Edwards: Yes.

Mr. Matthews: Depreciation?

Mr. Edwards: Yes.

366 Mr. Matthews: How far is your packing house and pre-cooling plant from the assembling point where these cars are moved? By the way, what road are you located on?

Mr. Edwards: On the Santa Fe.

Mr. Matthews: Where are the cars assembled on the Santa Fe, San Bernardino?

Mr. Edwards: At San Bernardino.

Mr. Matthews: How far is that away from your plant?

Mr. Edwards: Ten miles.

Mr. Matthews: What is the usual method of moving the cars to the assembling point and how long does it take?

Mr. Edwards: The collection of the cars begins immediately at the close of the day when the packing houses close. The crew that collects the cars begins to run around the loop, beginning at Redlands, picking up the cars, and they get to our station at Highlands, well, depending upon the amount of business, sometimes it is before midnight, but in the hurry part of the season and rush of the season, as late as two or three o'clock in the morning. They finally get to San Bernardino with their train and aim to get the cars iced and started East before daylight.

367 Mr. Matthews: Do you hold your cars any longer when you pre-cool and pre-ice the shipments than you do in ordinary shipments?

Mr. Edwards: Oh, no.

Mr. Matthews: The Santa Fe has a pre-cooling plant, has it not?

Mr. Edwards: They are experimenting along that line.

Mr. Matthews: Where is that plant located?

Mr. Edwards: At San Bernardino.

Mr. Matthews: That is at the assembling point?

Mr. Edwards: At the assembling point.

Mr. Matthews: What do you say as to whether the railroads can do that pre-cooling properly?

Mr. Edwards: I have no doubt they can do it properly, if they will follow proper methods, but I have never found an engineer yet that approved of their present method.

Mr. Matthews: How long do they claim, if you know, it will take to pre-cool a car?

Mr. Edwards: Well, I don't know; I have heard everything from four hours to eight, and I don't know but more.

Mr. Matthews: How long does it take you to pre-cool a car?

Mr. Edwards: Forty-eight hours to do it properly and safely.

Mr. Matthews: What do you mean by properly, what temperature do you bring it to?

368 Mr. Edwards: Bringing the whole box and everything in it down to a temperature of say 33 degrees and know that it is there.

Mr. Matthews: If the railroads claim that they can do it in four hours when the shipments——

Commissioner Prouty: Just how is it material to know whether the railroad system is a success or not?

Mr. Matthews: To show that this system is necessary for the preservation of the fruit and that the railroads cannot give it the same facilities. We expect to show that.

Commissioner Prouty: Do the railroads undertake to give the same service?

Mr. Matthews: They have a pre-cooling plant and a pre-cooling rate in their tariffs.

Commissioner Prouty: They make an extra charge for that?

Mr. Matthews: They make an extra charge for that, $55.00 for pre-cooling and pre-icing.

Commissioner Prouty: Your people are not obliged to accept that?

Mr. Matthews: That is true, but we want to show it is necessary for us to have this and follow that system.

Commissioner Prouty: The railroads, I understand, also
369 make a tariff now for oranges pre-cooled by the shipper?

Mr. Matthews: That is true, and that is what we are complaining of.

Commissioner Prouty: And the question before the Commission is whether that tariff is a reasonable one, so whether or not the railroads can or do satisfactorily pre-cool this fruit would have no bearing on that question, would it?

Mr. Matthews: I think it would, your Honors. It shows that if pre-cooling is necessary that the shipper must necessarily do it himself.

Commissioner Prouty: He should have a reasonable rate anyhow, if he does desire to do it. There are pre-cooling plants and it can be done and is done and a charge is made. Now, the question is whether that charge is reasonable.

Mr. Matthews: But the shipper cannot do it and pay the charge too.

Commissioner Prouty: That may be so.

Mr. Matthews: And therefore he is bound to go to the pre-cooling plant of the railroads or else do it himself.

Commissioner Prouty: Mr. Chase, for example, who seems to be a very large shipper, does not seem to want pre-cooling.

Mr. Matthews: We are going into that.

370 Commissioner Prouty: Now whether the railroads can or will do this in a satisfactory way will not be material unless you attack the charge which they make.

Mr. Matthews: We are not attacking that charge, we are not interested in it. To what extent can shippers take advantage of pre-cooling if it is permitted to be done without any charge by the carriers?

Mr. Edwards: Please repeat that question.

Mr. Matthews: To what extent can the shippers of citrus fruit in California take advantage of the pre-cooling plants if no charge is made therefor by the carriers, if this thirty dollar charge is wiped out?

Mr. Edwards: If it pays, they can provide their cooling plants all right, just as they do packing houses and every other facility.

Commissioner Prouty: Would you find it profitable to provide a pre-cooling plant, if you were obliged to pay thirty dollars per car?

Mr. Edwards: That is very questionable. It might. It depends. If they maintain an exorbitant rate as they do now for refrigeration, and I feel obliged to have the refrigeration, probably I could quit even and pay the thirty dollars a car.

371 Commissioner Prouty: That is to say you could put in your pre-cooling plant and pay thirty dollars a car as cheap as you can pay for refrigeration?

Mr. Edwards: It looks that way now.

Commissioner Prouty: And the pre-cooling would be better than the refrigeration; what do you say as to that?

Mr. Edwards: I would not start in and put in a plant——

Commissioner Prouty: Would the pre-cooling be better than the refrigeration to you?

Mr. Edwards: Oh, yes.

Mr. Matthews: And you can do it better than the railroads can in your judgment?

Mr. Edwards: Well, I think so.

Commissioner Prouty: Well, the system is different. He says he would rather have the pre-cooling and pre-icing than refrigeration.

Mr. Matthews: When you pre-cool and pre-ice shipments, is there anything different in the loading?

Commissioner Prouty: Do you mean the loading of the car of oranges?

Mr. Matthews: The loading of the car.

Mr. Edwards: We can safely load a much heavier car.

372 Mr. Matthews: Don't you actually load an extra row in pre-cooled and pre-iced cars?

Mr. Edwards: Yes, we do usually.

Commissioner Prouty: To what extent have you actually done that?

Mr. Edwards: I don't know that I can tell. I had not thought of being asked that question and I don't know that I can tell.

Commissioner Prouty: Are you satisfied to say that you could do it?

Mr. Edwards: Oh yes, indeed.

Commissioner Prouty: You would be satisfied with some disposition of this case which required you to do it, that is, which was conditioned upon the fact you should do it?

Mr. Edwards: Oh, yes.

Commissioner Prouty: That would amount to an increased minimum, would it not?

Mr. Edwards: Yes.

Commissioner Prouty: And how much of an increase could you stand in a car forty feet in length?

Mr. Edwards: Well——

Mr. Call: You load seven wide and two high?

Mr. Edwards: We would load seven wide and that would add one-sixth to any car. It adds one-sixth to the load of any car.

373 Commissioner Lane: 33,000 pounds instead of 26,000 pounds?

Mr. Edwards: Yes, sir.

Mr. Matthews: On the P. F. E. cars your ordinary load is 396 boxes, is it not?

Mr. Edwards: P. F. E. cars, yes.

Mr. Matthews: And seven rows wide and two high would be 462 boxes, is not that true?

Mr. Edwards: What was your question?

Mr. Matthews: An ordinary load is 396 boxes in P. F. E. cars, and seven rows long and two wide in a pre-cooled and pre-iced car would be 462 boxes?

Mr. Edwards: That is correct.

Mr. Matthews: And on the Santa Fe the ordinary load is 384 boxes?

Mr. Edwards: Yes.

Mr. Matthews: And 448 when pre-cooled and pre-iced?

Mr. Edwards: Yes.

Mr. Matthews: Is it possible to load what they call a deck load, referred to by Mr. Powell in his report?

Mr. Edwards: It is entirely safe to load a top load so far as the condition of the fruit is concerned.

Commissioner Prouty: Have you done that?

374 Mr. Edwards: Yes, we do it, especially in the case of a shortage of cars, we are perfectly safe in loading all the oranges we can get into the car.

Commissioner Prouty: How many boxes does the car contain when you put in this deck load?

Mr. Edwards: The Santa Fe car would take an additional 105 boxes. That is right.

Commissioner Prouty: From your standpoint as a grower and shipper of oranges, is there any reason why you might not pre-cool this fruit and send 550 boxes in a car?

Mr. Edwards: Well, so far as the condition of the fruit all you can get in the car is perfectly safe.

Commissioner Prouty: I do not know anything about the loading of these cars. Now I ask you as a shipper whether there is any objection from your standpoint, either commercial or mechanical?

Mr. Edwards: No, there is——

Commissioner Prouty: Would you be satisfied to load 550 boxes in a car if you were required to pay no additional sum for pre-cooling?

Mr. Edwards: For the pre-cooling and icing?

Commissioner Prouty: Yes, the pre-cooling and icing.

Mr. Edwards: Certainly we could do it perfectly safely. There is this objection to a top load, that it is very hard to fasten the braces so it will carry so well, but that is trivial compared with the advantage of——

375

Commissioner Prouty: You load these oranges, the shipper loads them?

Mr. Edwards: Yes, sir.

Commissioner Prouty: Do you furnish the bracing?

Mr. Edwards: Yes.

Mr. Call: I think I might make a statement which perhaps might be helpful in the determination of this case. There is involved in this case something over 90 per cent of all the citrus fruit produced in California, and some of the growers perhaps would feel that loading a car with such a very large load would deprive them of small markets where they did not want so much fruit; but in those markets I think they would be glad to take care of them in some other way, in order to secure the advantages which would inure to the business from permitting this pre-cooling proposition to become general and universal. And I think that I may say for all the people that I represent here that they would be glad to have this arbitrary charge removed at the expense of permitting as large a load as the car will carry. We are satisfied now that we could load that car seven wide and two high with perfect safety. And I would also say that we would be glad to use the cars with the collapsible bunkers, which permits about the same load under ventilation that a pre-cooled car would carry with the ice, that is, the load to be extended under the ventilated car; but it would be more compact in the pre-cooled car. If we can get those advantages we will load the cars up to any length they may furnish the cars in order to help the road to carry this fruit at the price they should reasonably exact for the service.

376

Mr. Durbrow: Are you speaking of floor capacity or cubical capacity?

Mr. Call: Floor capacity.

Commissioner Prouty: He speaks of floor capacity in the case of ventilation and cubical capacity in pre-cooled shipments.

Mr. Durbrow: That is what I want to clear up here. They are willing to load another tier higher?

Mr. Call: And there is no shipper we represent who would complain of discrimination if the same rate is given the pre-cooled car

that is given to a ventilated car. I am safe in speaking for ninety per cent of the shippers.

Mr. Norton: You mean pre-cool and pre-ice, when you
377 speak of pre-cool?

Mr. Call: Yes. We would not claim there is any discrimination in giving the same rate, just as you have charged in the past the same rate for a pre-cooled car that you have for a ventilated car.

Commissioner Prouty: You feel safe in making that proposition?

Mr. Call: Yes, that is, with a reasonable rate.

Mr. Matthews: What do you say as to whether this pre-cooling and pre-icing by the shipper would cause any discrimination against any of the other growers?

Mr. Edwards: I understand this right, if it is available at all, is available to every one and I do not see any discrimination in that.

Mr. Matthews: Have you made any arrangement with any icing house in Los Angeles to take care of the pre-cooling and pre-icing of cars?

Mr. Edwards: We have a contract now—when I say we, I mean the California Fruit Growers Exchange—have a contract with the Los Angeles Ice & Cold Storage Company for pre-cooling and pre-icing cars.

Mr. Matthews: What do they charge?

Mr. Edwards: 5 cents a box for the pre-cooling; that is,
378 they unload the boxes, pre-cool them and re-load them in the car for 5 cents a box, and then ice the car for $2.25 a ton.

Mr. Matthews: How many tons does it take ordinarily?

Mr. Edwards: That Santa Fe car under our method of icing would take six tons.

Commissioner Prouty: Now, Mr. Edwards you say there is no discrimination. When the railroad company hauls a car under ventilation it hauls the car and a minimum of perhaps 26,000 pounds of fruit; when it hauls a pre-cooled and pre-iced car it hauls the car with 26,000 pounds of fruit and 12,000 pounds of ice, part of the way, and that quantity is reduced; does not the railroad company render a greater service for you than it does for the shipper who ships under ventilation?

Mr. Edwards: Well, the railroad company—yes, of course. Any car that has got ice in it, unless we remunerate them by loading heavier, which we contemplate would probably be required.

Mr. Matthews: The net earnings on the gross tonnage under the pre-cooling system, including the weight of the car and the ice are greater, are they not, than in the ordinary ventilated or refrigerator car? Well, the statement speaks for itself.

Mr. Edwards: We have a statement here which will show
379 the exact figures.

Mr. Norton: Are we to have a copy of that statement?

Mr. Matthews: That is introduced already, showing the earnings per gross ton.

Commissioner Prouty: You already have that, showing the receipts under pre-cooled shipments as compared with ventilated ship-

ments, under the assumption that the car is loaded heavier with pre-cooled shipments.

Mr. Matthews: Where the railroad does its own pre-cooling is it possible to load seven rows high and two *high?* If not, why no?

Mr. Edwards: You mean in these experiments?

Mr. Matthews: Yes.

Mr. Edwards: No, for the reason that they are undertaking—I visited their plant so I know how they are planning, they are undertaking to force air from a cooling room through a large number of cars by a long circuit of pipes and switches and one thing and another and of course they have got to leave room between the boxes for the circulation of the air. And in our case we load them tight together and there is no difficulty—they have to leave the same room as they would if it was a ventilated car.

380 Mr. Matthews: Now have you made any investigation of refrigerator charges during the past two years?

Mr. Edwards: Yes, I have given a good deal of attention to that.

Mr. Call: I think perhaps, if the Commission will permit me, I ought to make it clear, so it will not be misunderstood at any time in the future, with regard to our position, and that is, that what I have said does not apply to the pre-cooling of the transportation companies, because we do not know what that is yet. All we know up to this point is what we can do. They may do just as well, but they have their own charge for that service, and that I suppose will be determined, what they can do in the future. But what we are discussing now is our own method of precooling.

Commissioner Prouty: You are not attacking that charge?

Mr. Call: We are not attacking that charge and we are not making any concessions in regard to it.

Mr. Matthews: I see Mr. Leeds is here. I was going ahead with Mr. Edwards on refrigeration, but I believe it would be better to examine Mr. Leeds first.

Commissioner Prouty: We will allow the defendants to cross examine on pre-cooling and you can recall Mr. Edwards if

381 desired.

Cross-examination:

Mr. Norton: Where you pre-cool and pre-ice a car is it not necessary that there be room among the boxes for the circulation of cold air from the ice, in order to maintain the pre-cooled temperature?

Mr. Edwards: Oh, no, indeed. The temperature of the oranges being down to 32, they get all the ventilation they need in spite of—all we have to do is to maintain it. We do not have to cool them, but maintain the temperature.

Mr. Norton: My understanding of the refrigeration process is that it circulates cold air through the car and they have to be packed in spaces so that the benefit of the ice temperature can get through the car.

Commissioner Prouty: The temperature of these oranges is already 33 degrees, and if they are packed in solid there is no way for them to get warm.

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Mr. Norton: But they do reach the east up to 60 degrees.

Commissioner Prouty: In the center of the car?

Mr. Norton: The car will not prevent the oranges from losing their low temperature, otherwise if pre-cooling and shutting them up in the car would preserve them indefinitely, there would
382 be no need of pre-icing.

Commissioner Prouty: But I understand the ice keeps the air in the car outside the oranges cool and the oranges themselves are cool, and when you pack the ice in, if you pack the ice together and put something around the ice, it keeps the air in the car cool.

Mr. Norton: The ice is in each end and there is a circulatory system in the ice chambers, as I have assumed.

Commissioner Prouty: Assuming what this witness states, that he packs his in solidly——

Mr. Norton: You say it is safe to load the car up to all it will hold?

Mr. Edwards: The more you can pack in there the better for the carrying purposes.

Mr. Norton: Are you acquainted with the fact that in the original hearing of the orange rate case the main complaint of the shippers was that they were compelled to load a high minimum, the minimum was so high that this circulation I am describing was prevented and resulted in loss.

Commissioner Prouty: He does not claim if you are going to use refrigeration, you can dispense with the circulation. He is talking about the pre-cooling system, which is entirely different.
383 Mr. Norton: The pre-cooling carries refrigeration with it, with about eight or nine tons of ice, and I do not understand the ice is put in for no purpose.

Mr. Call: Commissioner Prouty has explained exactly our proposition in regard to the pre-cooling.

Mr. Edwards: I think I could make it a little plainer if it is desired.

Mr. Norton: It is plain enough now the way you have stated it, if you want to let it go at that. How many carloads of fruit have been hauled to your plant for pre-cooling by the railroad company?

Mr. Edwards: None whatever.

Mr. Norton: Would it be practical to haul any by the railroad to your pre-cooling plant and unload and pre-cool and re-load and——

Mr. Edwards: We are doing that in Los Angeles.

Mr. Norton: How many pre-cooling plants are you operating?

Mr. Edwards: So far as I know there are three, one at Pomona and one at Los Angeles and our own.

Mr. Norton: Are you hauling into any other plant by rail and then pre-cooling?
384 Mr. Edwards: I only know about Los Angeles. I don't know whether Pomona does any of that or not.

Mr. Norton: What is the capacity of the Los Angeles Pre-cooling plant?

Commissioner Prouty: I think 15 cars a day, some one said.

Mr. J. H. Call: 17 cars a day.

Mr. Norton: I understood him to say 7 cars at his Highlands plant, but the Los Angeles plant I did not catch.

Mr. Edwards: There is a contract here which states, but I am not sure about the number of cars.

Mr. Norton: Can you refer to it? Have you the contract?

Commissioner Prouty: 17 cars, Mr. Call says.

Mr. Norton: How many cars have been sent out from the Los Angeles plant?

Mr. Edwards: This year?

Mr. Norton: Yes.

Mr. Edwards: I am not sure there were any; my impression is there were only one or two. The season is not on yet really.

Mr. Norton: How many were sent out last year?

Mr. Edwards: That I don't remember.

Mr. Norton: Now you speak about there formerly having been much decay of the oranges. Can you tell how much there
385–394 is at present under the present method of handling?

Mr. Edwards: Do you mean under the pre-cooling and pre-icing method?

Mr. Norton: Yes, and all methods, pre-cooling, pre-icing and refrigeration also.

Mr. Edwards: I have gathered no statistics in regard to that.

Mr. Norton: Can you state in a general way how it is compared with what it was in the days when you say there was much decay?

Mr. Edwards: The percentage of decay has largely decreased generally since the growers were taught what was the cause.

Mr. Call: That is of oranges?

Mr. Edwards: Of oranges, I speak of; I am not speaking of lemons at all.

Mr. Norton: You do not handle lemons?

Mr. Edwards: Well, we have just a few.

Mr. Norton: In this contract with the Los Angeles Ice & Cold Storage Company how much ice is the company under contract to furnish you per year?

Mr. Edwards: So far as how many cars, I have not the contract in mind, but I think it can be referred to.

Mr. Norton: Does the ice company guarantee to furnish you per annum any definite quantity?

395 Mr. Edwards: If your Honor please, I am not in the office, in the management of the California Fruit Growers Exchange, and I am not prepared to answer that kind of question.

Mr. Norton: I should have asked that of Mr. Woodford yesterday. He referred to that contract.

Mr. Call: We will bring him on again. He is here and you can ask him. He knows all about that and Mr. Edwards does not.

Mr. Durbrow: What is your method in pre-cooling in a general way? Do I understand when the oranges are picked from the tree and brought to your packing house, they are put in a cold storage room?

Mr. Edwards: Right in the ordinary cold storage room.

Mr. Durbrow: Then you send to the railroads for a car and it is brought to your packing house and the oranges are removed from this cold room and then placed into a warm car?

Mr. Edward: Well, we can put the ice in a little before we put the fruit in if we wish to, but——

Mr. Durbrow: But you do not do that as a matter of fact?

Mr. Edwards: We have done both ways.

Mr. Durbrow: Let me understand you: You pre-cool shipments; in the warm months of the year it gets pretty warm down at your place?

396 Mr. Edwards: Pretty warm.

Mr. Durbrow: What is the maximum temperature you find there?

Mr. Edwards: In the shade around 110 or 112.

Mr. Durbrow: These cars do not stand in the shade, do they?

Mr. Edwards: No.

Mr. Durbow: They stand in the sun?

Mr. Edwards: They stand in the sun.

Mr. Durbrow: You pre-cool the fruit, and it takes you forty-eight hours to pre-cool the fruit and bring it to what temperature?

Mr. Edwards: 33 degrees, we aim to; it varies a little bit.

Mr. Durbrow: Then you send to the railroad for a car?

Mr. Edwards: No, we send for a car first.

Mr. Durbrow: You send for the car first?

Mr. Call: About a month ahead.

Mr. Durbrow: About a month ahead. It must take some fine mathematics to determine this forty-eight hours and thirty days period so they will be simultaneously and synchronous.

Mr. Edwards: Well, we are frequently disappointed.

Mr. Durbrow: The car comes in there, and how long does it stand in front of your icing plant before it is loaded?

Mr. Edwards: They put the cars on our siding anywhere

397 in the forenoon, and we begin immediately to load them in the hurry part of the season.

Mr. Durbrow: What is the usual time a car remains at your packing house after it has been placed there until it is fully packed and sealed?

Mr. Edwards: Well, the greater part of the day.

Mr. Durbrow: Now when that car gets in there in the morning you finish packing in the day and the car is loaded during the day, and I understand sometimes over 100 degrees of temperature is playing upon that car?

Mr. Edwards: Yes, more than that.

Mr. Durbrow: And you take this cold fruit and put it into this hot car; do you know the temperature of the interior of the car when the fruit is loaded in there?

Mr. Edwards: I will have to explain to you.

Mr. Durbrow: I want you to.

Mr. Call: Do not take too long.

Mr. Edwards: They spot a car at the back of the pre-cooling room.

Now the temperature of the car, as he suggests, is like Yuma, and in the pre-cooling room it is down to 33 degrees. We push the vestibule across from the car door to the door of the pre-cooling
398 room and by the time the boys get the oranges trucked in and placed the temperature in the car is equalized between the temperature of the cool room, the cooling room being a very large one, containing four cars, and naturally when the temperature is equalized it is pretty low in the car. It is no use to monkey with putting ice in the car before hand when you can cool it so beautifully without. Don't you see?

Mr. Durbrow: Yes. Let me ask you if you know the temperature of the car when you put that fruit in there?

Mr. Edwards: Probably 130 degrees when we begin, when we open the car.

Mr. Durbrow: How long does it take you to load a car?

Mr. Edwards: We can load them very quickly, but usually I think we take about two hours.

Mr. Durbrow: About two hours you take to load the car?

Mr. Edwards: I may be wrong on that.

Mr. Durbrow: After the car is loaded it is sealed and then the ice is put in?

Mr. Edwards: No, we put in ice while we are loading or just as it suits; we always put it in either just before or while we are loading. Usually it goes in before we are loading.

Mr. Durbrow: And I understand you put six tons at each end of the car?

399 Mr. Edwards: No, three tons.

Mr. Durbrow: Six tons in the car?

Mr. Edwards: Yes, sir.

Mr. Durbrow: How long does that ice last?

Mr. Edwards: It lasts anywhere from ten to twenty days.

Commissioner Prouty: He has already testified, giving you the figures and showing the quantity of ice in the bunkers when the car reaches destination.

Mr. Durbrow: I do not think that is satisfactory, for the simple reason I think the records will show these cars are re-iced in transit, and I would like to know if he can tell me how long this ice lasts in the car.

Commissioner Lane: To whom would the bill be sent? You charge for it.

Mr. Durbrow: The regular re-icing was charged on the Southern Pacific, because there was no rule in the tariff permitting of modification of the general rule.

Commissioner Lane: He has not had any notification that you charged him for it.

Mr. Call: This is the Santa Fe.

Mr. Durbrow: They make some talk of reparation for this ice we put in the cars.

400 Mr. Call: These are Santa Fe cars.

Mr. Durbrow: I am talking of the general practice which obtained on the Southern Pacific Company's lines.

Mr. Call: We are coming to that.

Mr. Durbrow: And I assume that the Santa Fe follows the same practice. I do not know, but I would like to ask him if he can answer how long that ice will remain in the car after it has been pre-cooled.

Mr. Edwards: Of course I never watched a block of ice melt in a car, but it depends on the temperature across the continent.

Mr. Durbrow: Have you any records, at all, to show how long that ice will last?

Commissioner Prouty: All he knows is that the car reaches its destination with the bunkers from a quarter to a half full, and his records or the reports of his inspectors show that no ice was put in this side of the Missouri River or this side of Chicago.

Mr. Durbrow: But I thought the witness might know that.

Mr. Edwards: I have no way of knowing anything except from our records.

Mr. Durbrow: You say it costs you approximately 5 cents a box to pre-cool your orange shipments. I would like to ask you
401 if the ice expense is additional to that?

Mr. Edwards: Additional.

Mr. Durbrow: Does this 5 cents per box yield you any profit for performing that service or is that the actual cost?

Mr. Edwards: As I testified before, I would have to do some figuring to be absolutely reliable as to the actual cost. However, I am satisfied that estimate is about what it would cost to do the business. That is confirmed by the fact that others are willing to do it for that price. Now we figure interest on our investment and deterioration and the men's time and the engineer's and the wiper's and everything that goes into it.

Mr. Durbrow: You do not know whether that is the actual cost or not, that is an approximation.

Mr. Edwards: That is an approximation.

Mr. Durbrow: I would like to ask you if it is possible——

Mr. Edwards: Just a minute and I can go a little farther than that. We have arrived at some rather definite figure as to the cost of manufacturing ice; the pre-cooling of the car is equivalent in our method to about six tons of refrigeration, or three tons of ice, so I think——

Commissioner Prouty: What does it cost to manufacture ice per ton?

402 Mr. Edwards: They figure that about $2.50 a ton in our small plant.

Mr. Durbrow: I would like to ask you please, if it is feasible, possible or practicable, and if it is a proper method of pre-cooling cars, to ship the cars of oranges from the orchard or from the packing house for instance and pre-cool at certain points such as at Los Angeles, where you have this other plant?

Mr. Edwards: Whether it is practical?

Mr. Durbrow: Yes.

Mr. Edwards: Yes, because we are doing it.

Mr. Durbrow: And there is no objection then to having the cars

move from the packing house to Los Angeles where you have your plant and having the pre-cooling done here?

Mr. Edwards: No, I think we can do it better at our own houses; it is preferable.

Mr. Durbrow: But you are adopting this other method also?

Mr. Edwards: Yes, temporarily.

Mr. Durbrow: You have not had any bad results from that method, have you?

Mr. Edwards: Well, not——

Commissioner Prouty: He said they had not made any shipments yet, or only one shipment.

403 Mr. Edwards: This year.

Mr. Durbrow: That is a method you expect to follow in shipping some of your cars into Los Angeles?

Mr. Edwards: Yes, those which are adjacent here and can do it readily. You did not mean when you said that I—I am not doing this for the whole country, you understand—when you say you, you mean our Association?

Mr. Durbrow: Yes. I understood that you had a pre-cooling plant at Los Angeles?

Mr. Edwards: Personally?

Mr. Durbrow: No, but your association or somebody in the business.

Mr. Edwards: No.

Mr. Durbrow: But you have a contract with the ice company here to do that work for you?

Mr. Edwards: Our exchanges, our co-operative exchanges have a contract, of which our district exchanges avail themselves, and our shippers from around the country avail themselves of the provisions of that contract.

Mr. Durbrow: You do not avail yourselves of it?

Mr. Edwards: Personally, of course we do not, because we have our own local provisions.

404 Mr. Durbrow: Is that a straight refrigeration or pre-cooling service which is rendered, or is that a storage in transit proposition where the cars are brought in and stored in the ice house and moved forward to destination subsequently?

Mr. Call: I will say that this witness has nothing to do with that branch of the matter. Mr. Woodford has knowledge of that.

Mr. Durbrow: Do you know that?

Mr. Edwards: Please repeat the question.

Mr. Durbrow: I asked you if this arrangement you have effected here with this ice plant is for pre-cooling primarily or to permit the shippers of oranges to bring their oranges into Los Angeles and store them in an ice house in transit here and afterwards move them forward to their destination?

Mr. Edwards: I read that contract—no, I did not either.

Mr. Durbrow: Well, if you know.

Mr. Edwards: You had better refer to the contract.

Commissioner Prouty: You ask us to fix this pre-cooling charge on the theory it is a transit privilege or on the theory that it is a

privilege to be exercised by the shipper? It might be one thing to stop these cars off in transit and an entirely different thing to pre-cool the car before the shipment begins.

Mr. Call: At the present time I understand they do not
405 make an extra charge for shipping through Los Angeles and allowing them to be pre-cooled there and until this question was settled our growers were loathe to make the investment for these pre-cooling plants. If, however, we can have this arbitrary charge of thirty dollars abolished it will not be long, I think, before as a general rule they will have their own pre-cooling plants. Now we have nothing to complain of in regard to the Los Angeles pre-cooling in transit, because they did not make us any charge there, unless I think it is only five dollars; five dollars switching charge is all we have to pay now, and we had nothing to complain of and I see no reason for increasing that; if it is continued a good many of our growers can avail themselves of the privilege of icing here until they get their own plants or until the railroad companies furnish pre-cooling facilities at a reasonable price, which we think will save the fruit. They perhaps will meet the emergency and do it themselves. They have plants which could pre-cool part of the fruit any way, and it may be that they will build them and do it at a reasonable price and that will fill the bill, and if they do not, we would like to have them let us do it ourselves.

Mr. Durbrow: Do you consider 5 cents a box reasonable for pre-cooling?

Mr. Edwards: Well, it is liberal.

406 Mr. Durbrow: Is it reasonable?

Mr. Edwards: I should say reasonable.

Mr. Durbrow: In your opinion as an expert, in the experience you have had in this pre-cooling business would you say 5 cents a box for pre-cooling is reasonable?

Mr. Edwards: I think so. I would rather figure on it a minute and I could pretty nearly tell you.

Mr. Durbrow: After you are excused as a witness I would like to have you come to me and tell me if you think that is reasonable, and I would like to have it in the record here.

Mr. Edwards: All right.

Mr. Durbrow: What is the cost of constructing one of those pre-cooling plants?

Commissioner Prouty: He has already given you the cost of building his.

Mr. Durbrow: I want to develop this fact, whether it is practicable, possible, or feasible for the smaller shippers to construct these plants and whether they can be built on a small scale. He has given the cost of his as being at a cost of sixty thousand dollars and thinks it may be duplicated for fifty thousand. I would like to ask you what is the cost of constructing a plant, say to handle a car a day.

407 Mr. Edwards: I would have to do some figuring.

Mr. Durbrow: Well, is it your idea from the experience

you have had that it would pay the smaller growers to construct pre-cooling plants where they maintain these packing houses?

Mr. Edwards: Oh, yes.

Mr. Durbrow: For their own individual use?

Mr. Edwards: Just let it pay one and they will do it, and if they remove this charge we can make it pay everywhere.

Mr. Durbrow: Which charge do you refer to?

Mr. Edwards: The thirty dollar arbitrary.

Mr. Durbrow: For what?

Mr. Edwards: For nothing. They charge——

Commissioner Prouty: For pre-icing I understand they charge thirty dollars or some of these companies do, where the shipment is pre-cooled and pre-iced.

Mr. Durbrow: Pre-cooled and pre-iced. That is all.

(Witness excused.)

(The witness Edwards subsequently filed a series of tables as part of his testimony, which were marked Complainants' Exhibit No. 21-A, received in evidence March 24th, 1910, and same are attached hereto.)

408 P. J. DREHER, was called as a witness, and having been duly sworn, testified as follows:—

Direct examination:

Mr. Matthews: Where do you reside?

Mr. Dreher: Pomona.

Mr. Matthews: What is your business?

Mr. Dreher: I am Manager of the San Antonio Fruit Exchange.

Mr. Matthews: Will you state to the Commission your experience in the pre-cooling business, and start by stating how your plant differs from Mr. Edwards' plant?

Mr. Dreher: The plant at Pomona, owned by the Pomona Fruit Growers' Exchange, an association of growers, belonging to our Exchange, is a cold air circulating system. We derive and receive the cold air from an ice plant owned by the Pomona Valley Ice Company with whom we have a contract. It is pumped underneath the street to our packing house, and with a system of fans is blown through a conduit along the end of our pre-cooling rooms; along the sides of each pre-cooling room there is a large conduit for bringing in the cold air with a trap door or grate opening up into the main conduit. The floors are hollow underneath with holes perforated all through, and the ceiling is hollow above, and the upper vacant
409 chamber above the ceiling opens into another air conduit which goes back to the fan again, so that the cold air is blown through the conduit brought in through the side of the house of the pre-cooling room, goes underneath the floor, and is drawn up between the fruit and taken out at the ceiling and back over the ammonia pipes again. It is a cold air circulating system.

Mr. Matthews: To what extent have you made shipments of pre-cooled and pre-iced fruit in the last two years?

Mr. Dreher: I am getting to that already. I suppose we have shipped from 400 to 500 cars up to this year, in the last two years.

Commissioner Prouty: How many cars can you handle a day?

Mr. Dreher: We pack there as many as 10 or 12 cars a day. We have six pre-cooling rooms in the house, with a normal capacity of 42 cars, three pre-cooling rooms with a capacity of six cars, and three with a capacity of eight cars. Our packing house has a capacity —, and it can be increased to a capacity of 20 cars a day.

Mr. Norton: What is it now?

Mr. Dreher: We have 10 to 12 cars, about 12 cars is about the largest, because the volume of fruit is not any larger that we have handled.

Mr. Matthews: On what road are you located?

410 Mr. Dreher: On the Southern Pacific and the Salt Lake road.

Mr. Matthews: How far are you from Colton?

Mr. Dreher: About 25 miles west of Colton and 35 miles east of Los Angeles.

Mr. Matthews: To what points are these pre-cooled cars sent?

Mr. Dreher: To all points, Montreal, Canada, and Boston, New York, Philadelphia and all throughout the east.

Mr. Matthews: In what condition does the fruit arrive?

Mr. Dreher: Practically sound in every car.

Mr. Matthews: What does it cost you to pre-cool and pre-ice a car?

Mr. Dreher: Four cents a box is the entire charge for the cold air in the circulating of the ammonia, that is what we pay the Valley Ice Company, four cents a box for pre-cooling.

Commissioner Prouty: You put in a plant?

Mr. Dreher: We have our own pre-cooling rooms, and they furnish us the air.

Commissioner Prouty: They put in the fans?

Mr. Dreher: They put in the fans and the power and the circulating and the ammonia, and we pay them $3.25 for ice in the bunkers of the car. I am talking of last year's contract. The contract provided if we used 700 tons of ice we would have a rate of $3.00, and if we loaded a larger quantity, we would have a less rate.

411 On account of the pre-cooling charge, though, being assessed, as Mr. Edwards says, for no service to the railroad company, we have only shipped as few cars as we were compelled to under ice, but shipped a great many through of our own pre-cooled fruit without any ice whatever, shipping them under regular ventilation.

Mr. Matthews: During what months have you made those shipments?

Mr. Dreher: During the months of March, April and May, and even some in June, taking the risk of suffering a little decay rather than be assessed the arbitrary charges of $75 to $100 or more, which were assessed by the carriers.

Commissioner Prouty: Have you paid the regular refrigeration charge?

Mr. Dreher: They assessed it to us. We were compelled to pay

it in most cases to get the liberty of the product, but after the $30 charge was in effect the latter part of the season, we preferred to pay the $30 charge under protest, and I will have a record here which is gotten up for me and the data may be in the house, it is to be here for me, of the number of cars which were shipped under that system——

Commissioner Prouty: You may file as part of your testimony, or as an exhibit in the case, a statement showing the number of
412 cars which you shipped pre-cooled, the points to which the shipments were made, the dates on which they were made, and the charges which you paid.

Mr. Call: That may be done.

Mr. Durbrow: May we have copies?

Mr. Dreher: Yes.

Mr. Matthews: Under what instructions did you ship those cars?

Mr. Dreher: These cars went out under instructions, "plugs in vents closed and sealed to destination; do not vent through side doors; do not re-ice in transit."

Mr. Matthews: What does it cost you to provide facilities for pre-cooling under a contract like you have with the ice company, what additional investment do you have to make?

Mr. Dreher: We have an investment of from $25,000 to $30,000 in the pre-cooling plant. It is a part of our system, a part of our packing house.

Commissioner Prouty: You mean it cost you——

Mr. Dreher: From $35,000 to $50,000.

Commissioner Prouty: From $35,000 to $50,000.

Mr. Dreher: $25,000 to $30,000, if you please, more than it would if we had built the small packing house without the pre-cooling plant. Now, it is our contention and I believe Mr.
413 Powell's investigations have conclusively proved that to the satisfaction of all, that the pre-cooling is good when it is done quickly, and refrigeration is good if it is done quick. I would rather take a piece of meat before it is stale and put it in the ice box than wait until it gets stale before putting it there. On that theory our packing house is so constructed that the moment the nailer nails the lid on the box he puts it on the conveyor which conveys the fruit from his bench by gravity to the different parts of the packing house, and we throw the switches on one or the other of these packing rooms, and it takes it to the back end of the packing-room as fast as they are filled. The packing room remains cool, so when we begin to pack, we begin filling that room up, and virtually as the fruit goes in box by box, it goes into a cool room, and is brought under refrigeration at the earliest possible moment, and when the fruit is all in, we turn on the cold air, and the result is that in 24 hours from the time we turn on the cold air we can bring down the temperature of the room on the outside to about 35 degrees; but we find that inside the orange boxes, by taking long thermometers and inserting them into the inside oranges, that the temperature inside the oranges is six to seven degrees higher
414 after 24 hours than it is on the outside, and we think the safest way and the way we have adopted, is not to try to

cool down the fruit, and we do not believe we can safely cool down the fruit inside short of 36 to 40 hours.

Commissioner Prouty: Do you ever cool the fruit if it is not to be shipped pre-iced?

Mr. Dreher: Cool fruit is better than warm, remembering that much of our fruit comes in at a temperature of 130 degrees during the heat of the day, and it absorbs it and holds it, and it is very hard to dislodge that heat.

Commissioner Prouty: Do you use your cool rooms at this time of the year?

Mr. Dreher: We have used them some. Take for instance when a warm day comes up in February and March, we put the fruit down there and put the fans in and cold air on it, and blow the heat off, and in that way use it. It is very practicable and valuable for that. Last year we took a great many cars of fruit and have this year that we believe is a little warm, and we pump the cold air over it and pump it through the conduits and take the heat out, and it goes in very much better condition.

Mr. Matthews: To what temperature do you think it
415 necessary to reduce the fruit?

Mr. Dreher: 32, 33, 34—I would say 32 to 33 degrees is ideal temperature, but the fruit inside the package should be the same in coolness that the outside of the package is.

Mr. Norton: Would 32 degrees freeze the fruit?

Mr. Dreher: No, we do not run it to 32 degrees. We aim to have it reach 33. I do not think it would, but I would be afraid to put on a blast of 10 or 15 degrees or zero, because I am afraid it would injure it; but we aim to bring the temperature down to 33 degrees.

Mr. Matthews: What do you say as to whether or not all growers can take advantage of this pre-cooling and pre-icing method?

Mr. Dreher: All progressive growers will take advantage of it just the same as all progressive growers take advantage of improved packing methods and machinery. If you can show it is practicable and desirable, they will provide the means for doing it.

Mr. Matthews: The same as they have done in packing and co-operation?

Mr. Dreher: Yes. I will say that of our associations, one of them has even bought ground and is building, and has invested $7000 already and is waiting until this arbitrary charge is removed
416 to install pre-cooling plants, and the moment it is removed, they will all have pre-cooling plants for their houses.

Mr. Matthews: What other methods are in use besides the one being used by you, and the one of Mr. Edwards?

Mr. Dreher: There is another quite cheap method, known as the Cooper Brien Circulation System, which is being introduced in some of the houses now, and they have contracts for it. It is a pre-cooling room like the other, but there is an ice chamber built at a little higher elevation, and there is a circulation of salt brine. I cannot tell you what it is. It circulates through the ice chambers and through the pre-cooling room, and the cold forces the brine into the

circulating system, and in this way they establish refrigeration at a nominal cost. The plant costs nothing to operate except for the ice to furnish the proper cold for the circulating brine, and when you do not use it, it is only at a nominal expense. I believe a plant can be erected of that kind, if I am not mistaken, I think Mr. Halsted told me, about $600 to $1000, for a car capacity, and there is no machinery about it, and the plant would be good almost all the time until your pipes in which the brine would circulate would rust or have to be replaced. Mr. Cooper is installing one of
417 these systems as a model, and I believe the Upland Association are under contract for an eight car system of that kind, and are installing it now. I think the machinery is on the ground. That would make the three systems, the brine system, the circulating air system, and the gravity or whatever you call it, that is at East Highland.

Mr. Matthews: What do you say as to the loading of pre-cooled and pre-iced cars?

Mr. Dreher: Pre-cooled fruit being practically down to the freezing point can be loaded solid, and we have loaded all pre-cooled cars seven wide and two tiers high. I do not believe it is safe to load above that because the car gets top heavy, and the weight of the fruit might itself crush the boxes below. I remember well that the Southern Pacific Company refused to let the Continental Fruit Express cars come in here at a time when we wanted to use them, on the theory they were top heavy, and I began to study the matter then, and they told me that the top heaviness of the car would spring the load, and it was more likely to throw the boxes and crush them against each other. There is just enough space to give spring and break the boxes in throwing them backward and forward, so I do not think it is safe to load any car more than two tiers
418 high.

Cross-examination:

Mr. Norton: Mr. Dreher, in what seasons of the year did you send pre-cooled and pre-iced cars east?

Mr. Dreher: During April, May, June and July and August.

Mr. Norton: You say you sent from 400 to 500 in the last two years?

Mr. Dreher: Yes, I would say so off-handed. I am speaking from memory now.

Mr. Norton: Do you know anything about this Los Angeles ice contract which was mentioned by the last witness?

Mr. Dreher: I do in a general way. I do not know the specific details of it.

Mr. Norton: Very well.

Mr. Dreher: I would state, though, if the Commission desires, that the Pasadena Ice Company and the Pomona Ice Company have both offered us the storage capacity or pre-cooling capacity, they have offered to pre-cool for us at Pasadena for our shipments originating on the Santa Fe, and have offered to pre-cool if we hauled the fruit to Pomona, so not only is this plant open to us, but at Pasadena and

Pomona, and they have offered all the facilities for those associations that have not pre-cooling plants.

419 Mr. Norton: You say it costs about $25,000 to $30,000 for——

Mr. Dreher: I say this plant of ours cost from $25,000 to $30,000, and has a capacity of 42 cars.

Mr. Norton: For pre-cooling rooms?

Mr. Dreher: Yes.

Mr. Norton: What would it cost if you were to provide the cold air also which you are now buying?

Mr. Dreher: I don't know what an ice plant would cost.

Mr. Norton: Well, an ammonia plant, if you were to put in an ammonia cooling process?

Mr. Dreher: I have not any idea. I have not made any inquiry about it.

Mr. Norton: It would not be practicable to provide such a plant for every packing house, would it?

Mr. Dreher: I do not say that it would, but it would be practicable for such communities as San Dimas and Claremont, who have a large consuming population, to make their own ice and supply their own people with ice at a big profit, and I think it would be economical for them to do it. In fact, I have advised our people at Claremont and San Dimas to build an ice plant, because the revenue from the ice would pay the interest on the plant.

420 Mr. Norton: What is the revenue from ice?

Mr. Dreher: I know if it can be made for $2.00 to $2.50, and they have to pay $15 or $20 for it, there must be quite a profit somewhere.

Mr. Norton: Have you been getting any ice for $2.00 or $2.50?

Mr. Dreher: No, sir. We have a contract now, this contract with the Los Angeles Ice and Cold Storage Company, for $2.25, but I did say last year our contract with Mr. Halsted was $3.25 for ice in the bunkers, and if we took 700 tons, he would reduce it to $3.00, and if we took a larger quantity, he would make a further reduction.

Mr. Norton: Would he, under this contract, guarantee to supply you ice under all circumstances and conditions?

Mr. Dreher: Yes.

Mr. Norton: All the year round?

Mr. Dreher: Yes.

Mr. Norton: Is that provided in the contract?

Mr. Dreher: Well, I would say it is. I would say that the contract is that he would provide us all the ice we need.

Mr. Norton: Have you the contract with you?

Mr. Dreher: No, sir, I have not.

Mr. Norton: I would like to see what the obligations of

421 that man are to furnish you ice, no matter what may happen.

Mr. Dreher: I would just state that they have an ice plant at Pasadena from which they could ship ice if the Pomona plant burned down. They are not depending on one plant alone.

Mr. Norton: Yes, but something might happen to the Pasadena plant.

Mr. Dreher: Yes, and your bridges might burn, we don't know what may happen.

Mr. Norton: But we have proved responsible under those conditions, and the ice man might not, and I would like to know what the conditions are in that regard. I think that is all.

Mr. Durbrow: Do you pre-cool the cars when you load the cars?

Mr. Dreher: No, we put the ice into the car at the ice plant, and run them across the street over to our packing house and put in the fruit.

Mr. Durbrow: And do you have this arrangement which this other gentleman had, of saving the cold air, so that you cool the car while loading?

Mr. Dreher: We have a vestibule, but it is not built up to the car, but it is an easy thing to do. There is about three or four feet there which is not built in.

422 Mr. Durbrow: Do you know what the temperature of the car is when you load in?

Mr. Dreher: No, but they are generally cool. They are not as hot as outside because they are supposed to be proper insulated, and if they are properly insulated and the doors are kept closed, they are not so hot inside.

Mr. Durbrow: I understand you pay four cents per box for the cold air and power you use in pre-cooling?

Mr. Dreher: Yes, sir.

Mr. Durbrow: In addition to that you have provided facilities for this pre-cooling service which aggregates about $25,000 to $30,000?

Mr. Dreher: I say the plant constructed there, it is a compound packing house and pre-cooling plant, and the figures the best way we could get them, I would say roughly without going into details, that the pre-cooling part of the plant cost $25,000 to $30,000.

Mr. Durbrow: Have you any idea—say something about five cents a box for pre-cooling the fruit, taking into consideration your investment?

Mr. Dreher: I don't know anything about that. We handle a great deal of fruit through there in a normal year, and if the arbitrary charge were taken off we would probably pre-cool

423 400 or 500 cars, and the price per box would be nominal, and the interest on the investment would be small.

Mr. Durbrow: Have you performed pre-cooling for any other shipper than yourself?

Mr. Dreher: No.

Mr. Durbrow: And you are favorably situated by reason of the fact you are right across the street from the ice plant?

Mr. Dreher: Possibly more so than the general people, but——

Mr. Durbrow: You spoke something about having these ice plants and pre-cooling plants established to care for the interests of the shippers in these different communities.

Mr. Dreher: I said I advised our people at San Dimas and Claremont to build them because they could make a profit out of selling ice to the customers in the vicinity of the packing plant.

Mr. Durbrow: From your experience is it your opinion that these

pre-cooling and pre-iceing plants would be established to care for the interests of these different communities, and the shippers would by co-operation take advantage of those facilities, even providing themselves individually with the facilities?

Mr. Dreher: I think all the progressive organizations would have them, just the same as they have first class packing houses
424 and discard ones that might not be model houses, and build new ones; just as we did in San Dimas, we sold an old lemon house and put $35,000 into a new one because we needed a better one.

Mr. Durbrow: Then it is your idea by a community of interests these icing houses will be established, and a charge made to the individual shipper for the service?

Mr. Dreher: No, I believe there is no charge; the growers who own these plants are the only ones who use them. It is not intended in the suggestion I have made that there should be anything for the public. In our own organization I would say that there are about 90 or 95 per cent of the growers in the valley, and those who would not wish to co-operate with us, would not want us to pre-cool the fruit, either.

Mr. Matthews: Would it be possible, in a place like Redlands, where there are a dozen packing houses, to have one pre-cooling plant take care of the business of that whole district?

Mr. Dreher: I would think so.

(Witness excused.)

Mr. Call: I will call Mr. Leeds.

Mr. Norton: There is a witness here who wants to get away
425 at five o'clock. May we put him on out of order? It is on this pre-cooling subject?

Mr. Call: Yes.

E. M. Lyon, was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Norton: Where do you live, Mr. Lyon?
Mr. Lyon: Redlands.
Mr. Norton: What is your business?
Mr. Lyon: I am in the fruit raising and packing business.
Mr. Norton: What kind of fruit are you raising and packing?
Mr. Lyon: Oranges.
Mr. Norton: Oranges alone?
Mr. Lyon: Yes.
Mr. Norton: How large an acreage have you?
Mr. Lyon: About 200 acres.
Mr. Norton: How long have you been in the business?
Mr. Lyon: You mean in the packing or raising of fruit?
Mr. Norton: Well, in the raising?
Mr. Lyon: About 20 years.

Mr. Norton: When you speak of 200 acres, that is your personal property or property you are supervising for others?

426 Mr. Lyon: No, it is right in our own family.

Mr. Norton: How long have you owned this 200 acres?

Mr. Lyon: Most of it anywhere from 15 to 20 years.

Mr. Norton: How old are the trees?

Mr. Lyon: They run from 20 years down to 15, I think, or 14 years.

Mr. Norton: Are the 200 acres productive?

Mr. Lyon: Yes.

Mr. Norton: All in bearing?

Mr. Lyon: Yes.

Mr. Norton: What about the 22 year old trees, as to productiveness, are they still in bearing?

Mr. Lyon: Yes.

Mr. Norton: Are they fruitful?

Mr. Lyon: Yes.

Mr. Norton: As compared with younger trees?

Mr. Lyon: Yes.

Mr. Norton: What number of pounds does your orchard yield per acre, if you can tell?

Mr. Lyon: I have not got the figures for that way.

Mr. Norton: Can you state it in boxes, and then we can compute it. About how many boxes to the acre?

427 Mr. Lyon: They will average, I think, about 400 boxes to the acre.

Mr. Norton: 400 boxes to the acre?

Mr. Lyon: About that.

Mr. Norton: How long has it averaged 400 boxes, will it do that from year to year?

Mr. Lyon: Oh, it has been doing that for a number of years.

Mr. Norton: Can you tell what prices you have received f. o. b. California?

Mr. Lyon: They have varied every year. There are no two years alike.

Mr. Norton: How high a price have you received, if you are not unwilling to tell, and then how low?

Mr. Lyon: Why, we have averaged as high as 2¼ cents a pound, and it has gone down to about 1¼ cents a pound.

Commissioner Prouty: That is f. o. b. your station?

Mr. Lyon: Yes, sir.

Mr. Norton: What varieties have you?

Mr. Lyon: Navels and Valencias.

Mr. Norton: How many carloads did you have this year, this last closed season?

Mr. Lyon: I could not give it exactly because I handled
428 a great deal of fruit outside of my own, and I keep my own simply by the number of pounds from the ranch, in making up the statements, but it would be about—I think last year we averaged about 120 cars or something like that.

Mr. Norton: Of your own, 120 cars?

Mr. Lyon: Yes.

Commissioner Lane: If you had 400 boxes to the acre and had 200 acres, you would have about 200 cars, would you not?

Mr. Lyon: Well, you must remember when you are speaking of the boxes to the acre you are speaking about loose boxes as they come from the ranch, and where you speak of carloads, you are speaking of packed boxes.

Commissioner Lane: Your box is the 40 pound box which you speak of?

Mr. Lyon: Yes.

Commissioner Prouty: It was packed boxes we were speaking of.

Mr. Norton: I thought you were talking of packed boxes.

Mr. Lyon: No.

Mr. Call: That is 200 packed boxes to the acre?

Mr. Lyon: It would go a little bit over that.

Mr. Norton: How many packed boxes did you say?

Mr. Lyon: To the acre?

Mr. Norton: Yes.

429 Mr. Lyon: It would go pretty close to about 225 packed boxes to the acre; that was about what I gave you, Mr. Call, was it not?

Mr. Call: Yes.

Mr. Norton: How many cars did you handle for other people?

Mr. Lyon: My pack last year was 300 and some cars, I don't remember exactly.

Mr. Norton: How much moved under refrigeration?

Mr. Lyon: Last year I had a larger proportion than usual, because I shipped a great deal of fruit in May; I think there were about 125 cars that went under refrigeration.

Mr. Norton: Did you ship any under pre-cooling and pre-icing?

Mr. Lyon: No, sir, I have no facilities.

Mr. Norton: You have no facilities?

Mr. Lyon: No.

Mr. Norton: Have you given that subject any study?

Mr. Lyon: Yes.

Mr. Norton: How long have you been attending to the subject.

Mr. Lyon: I have watched it ever since it was first started and learned as much as I could on the subject.

Mr. Norton: Have you come to any conclusion as to its practicability?

Mr. Lyon: I think in large plants it is practicable. I

430 think it is a fine thing, a splendid thing for the fruit.

Mr. Norton: And in small plants?

Mr. Lyon: I think the expense for installing a plant at present is too heavy.

Mr. Norton: Well, your examination, then, is to the effect that only the larger places have this pre-cooling available to them?

Mr. Lyon: Unless there is some new method of introducing the pre-cooling rooms to the packing house, I do not think it is available.

Mr. Norton: Do you know anything about the percentage of

decay during the time you have been in the business, in former times and at the present time?

Mr. Lyon: That varies very much from year to year, and it also varies in the manner the fruit is handled. Some years the fruit seems to have a stronger tendency to decay than others. We have gone through some years when there was practically no decay, the entire season, and there was one year that the percentage of decay for a month was fully 25 per cent.

Mr. Norton: How long ago was that?

Mr. Lyon: Mr. Chambers can remember the time we had such trouble in getting cars, that was the year. What year was that?

431 Mr. Chambers: It was a long time ago, I cannot remember.

Mr. Norton: The percentage of decay you speak of has not occurred of recent years?

Mr. Lyon: We have not had heavy decay at all in recent years.

Mr. Norton: As a matter of fact, is not the decay now nothing or merely a nominal decay?

Mr. Lyon: Nominal, so far as I am concerned.

Mr. Norton: You have no decay to speak of?

Mr. Lyon: Oh there would be occasionally a car that there is more decay than ought to be reported, but as a rule we have not had any appreciable decay reported.

Mr. Norton: You have availed yourselves of Professor Powell's study?

Mr. Lyon: Yes, sir.

Mr. Norton: And that has practically eliminated decay from the fruit business?

Mr. Lyon: I think it has helped it very materially.

Mr. Norton: If followed it does eliminate it, does it not?

Mr. Lyon: To a great extent, yes, sir.

Mr. Norton: If the smaller dealers and packers and shippers cannot at the present time provide pre-cooling facilities, what do you say as to the carrier providing such facilities in order that

432 they may have what the larger shippers avail themselves of in their association?

Mr. Lyon: It would be a great benefit to them if the carrier gives it to them at a reasonable cost.

Commissioner Prouty: Do you understand that anybody objects to that, Mr. Norton?

Mr. Norton: No, and we do not object to their pre-cooling. We have never raised any objection to that, as a matter of fact——

Mr. Lyon: I would say this, if a large shipper could pre-cool his own fruit, and the small shipper has to have it pre-cooled by some central company and he has to pay that central company more than it costs the larger shipper, he is laboring at a big disadvantage.

Commissioner Prouty: That is true if he ships his fruit, or anything else.

Mr. Lyon: If you pack over 100 cars of fruit I believe you can pack it just as cheap as any larger shipper can. I think I can handle 200 cars and not have it cost a bit more per box than a man who is packing 600 or 800 cars.

Commissioner Prouty: Suppose the railroad company provides no pre-cooling facilities for the small shipper, and that such
433 facilities can only be provided by the large shipper; would it create a discrimination against the small shipper which would be injurious to him, if this pre-cooling charge were removed and the railroad transported the pre-cooled and pre-iced fruit at the same rate it did the ventilated fruit?

Mr. Lyon: I do not quite get—do you mean that if the present charge that is made against those who pre-cool is removed?

Commissioner Prouty: Yes, if that charge is removed altogether so that pre-cooled fruit goes at the same charge as ventilated fruit, but the shipper who employs refrigeration is obliged to pay for it the same as at present or some reasonable sum, would that condition of things work a discrimination against the small shipper who could not pre-cool his fruit and is obliged to refrigerate his fruit?

Mr. Lyon: Certainly it would give the larger shipper quite an advantage. In the first place, the pre-cooling of the fruit in the packing house is undoubtedly a benefit; it helps the fruit to get it pre-cooled just as soon after you get it in the house as possible; that has been proved conclusively by Mr. Powell's experiments on the part of the Government. Now, if the small shipper cannot do that, of course he has got a certain element against him there. Now,
434 in addition to that, if it costs him more to pay regular icing charges than it does the large shipper, that is an advantage he has against him.

Commissioner Prouty: That is to say, if his ice charges cost him more than the pre-cooling costs the large shipper, he would be at a disadvantage?

Mr. Lyon: Yes, sir.

Commissioner Prouty: Both because he has to pay out more money and because the service is not as good when he gets it?

Mr. Lyon: Yes, sir.

Commissioner Lane: What is the service rendered by the railroad when the shipper pre-ices and pre-cools the shipment, what is the service for which there should be a charge made?

Mr. Lyon: That the railroad can answer better than I can, I think, Judge.

Commissioner Lane: Do you think that there would be any objection on the part of the small shippers to having the minimum raised from 28,000 pounds say to 32,000 pounds or 33,000 pounds on a pre-iced shipment, so that there would be the same weight of car carried upon the rate without any charge whatever for pre-icing?

Mr. Lyon: I do not quite get the point of that.

Commissioner Lane: Suppose that I pre-ice my car, instead
435 of loading 28,000 pounds into it, I load 32,000 pounds, so that the difference between the 28,000 pounds and 32,000 pounds makes up in weight in oranges what weight would be carried if the car was iced?

Mr. Lyon: Well, but the pre-cooled car is also iced.

Commissioner Prouty: The pre-cooled car carries at the beginning about six tons of ice.

Mr. Lyon: Yes.

Commissioner Lane: Supposing the carriage of that ice is at a higher minimum, do you think there would be any disadvantage to the small shipper in applying the flat rate upon the small shipper and the large shipper alike?

Mr. Lyon: If they give a benefit to the party who pre-cools by giving him what amounts to a lower rate, if he puts in an extra amount of fruit, why should they not give it to the small shipper by allowing him to put in an extra amount where they ice?

Commissioner Lane: Do you think the minimum could be raised as to the small shipper?

Mr. Lyon: If the railroads furnish pre-cooling facilities, for instance, they could put in an extra amount of fruit just the same as a large shipper could, and if one should have the advantage in rate, the other should have a corresponding advantage.

436 Commissioner Prouty: The point is this, if the railroad does not provide any pre-cooling facilities, so that the small shipper is obliged to pay refrigeration charges, would that from your standpoint be a discrimination against the small shipper which would seriously affect him in his competition with the large shipper?

Mr. Lyon: Well, whether it does or not, it seems to me that if the large shipper does his pre-cooling and pre-icing himself and there is no corresponding service rendered by the railroad company, he should have the benefit of that for the investment and expense which he has been to, even if it is a hardship to the small shipper; and I am a small shipper myself, in saying that.

Commissioner Prouty: You, as a small shipper, see no reason why that charge should not be eliminated?

Mr. Lyon: Well, I do not want to come into competition with him on those terms if I can avoid it. I want a reduction in the icing charges myself.

Commissioner Prouty: What you want is a horizontal reduction?

Mr. Lyon: Yes.

Mr. Norton: Commissioner Lane asked you about the in-
437 crease of the minimum. Could you safely load above the present minimum a car fully refrigerated, or are you now loading up to the minimum, practically, to the capacity of the car, I should say, under the present minimum?

Mr. Lyon: Take, for instance a few years ago, when there was a shortage of cars, we loaded up after the ice much heavier than the ordinary car, but it was quite seldom that I could detect there was any harm resulting from it. I do not think it is safe to load a car above 28,000 pounds, if it goes through under ventilation, but if the fruit is put in in proper condition and the car is iced, I think a larger amount of fruit can be put in.

Cross-examination:

Mr. Call: Don't you think if there is any money in pre-cooling and this arbitrary is removed in shipping that way, that the shippers would get together even in Redlands?

Mr. Lyon: That has not been gone into sufficiently, I don't believe, to answer that question. You know the packing houses in

Redlands are scattered along the two roads there for quite a distance. Now, whether you could put in any pre-cooling plant by which you could convey the ammonia or the temperature so as to have pre-cooling rooms attached to each packing house, I could not
438 answer; I don't know.

Mr. Call: They could get in groups, if it is a good thing, and they could save money by it, and do good to the fruit; they would get together in groups almost everywhere and do this pre-cooling?

Mr. Lyon: If there is money in it, of course they would try to, but at the same time I think the investment would be pretty heavy, if it costs, as Mr. Dreher just stated, about $25,000 just to put in the pre-cooling rooms.

Commissioner Prouty: That is largely a matter of speculation.

Mr. Call: You people over there at Redlands do not concede there is any better place to grow navels than Redlands?

Mr. Lyon: Naturally we think it is as good as any.

Mr. Call: That is about the fact, is it not, that Redlands is considered about the best place?

Mr. Lyon: I think the average returns at Redlands have been as good as any.

Mr. Call: And your groves do not occupy second place with anybody at Redlands?

Mr. Lyon: I would not like to admit that it is.

Mr. Call: Your brand, the lion head, has been known for a
439 generation?

Mr. Lyon: It has been on 15 years or more.

Mr. Call: Pretty well known in the auction rooms of the country?

Mr. Lyon: Yes.

Mr. Call: There don't any of the boys beat you very much for prices?

Mr. Lyon: I don't believe they do.

Mr. Call: That is all.

Mr. Norton: What price do you receive for oranges?

Commissioner Prouty: He stated that. He gave it in pounds.

Mr. Matthews: Suppose one shipper sends a shipment without pre-cooling, without pre-icing, for which the railroad makes no charge, and another shipper ships a car at the same time and is required to refrigerate; don't you think the discrimination is there equally as if it is pre-cooled and pre-iced and the $30 charge made?

Mr. Lyon: If I understand your question, the man who pre-cools his own fruit has got the interest on his investment and cost of pre-cooling, and then he has in addition to that $30 that he pays the railroads.

Mr. Matthews: After he pre-cools, but does not pre-ice.

440 Mr. Lyon: Oh, I thought you meant where they did both.

Mr. Matthews: Where they merely pre-cool.

Mr. Lyon: If he pre-cools, of course all his expense is what it costs him to put that fruit in the car pre-cooled, and he has whatever difference there is between that cost and the cost of the man who paid the present icing charges.

Mr. Matthews: And you cannot complain of that, can you?

Mr. Lyon: There is no way that I can complain, as I have repeatedly, I think the railroads will tell you that; I have asked for lower icing charges again and again.

Mr. Matthews: Do you think the refrigeration charges are too high?

Mr. Lyon: I haven't any question about it in my own mind.

(Witness excused.)

441 J. S. LEEDS, was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Matthews: Where do you reside?

Mr. Leeds: Chicago.

Mr. Matthews: You are the General Manager of the Santa Fe Refrigerator Despatch Company?

Mr. Leeds: Leave the General off; I am Manager of the Santa Fe Refrigerator Despatch Company.

Mr. Matthews: By whom is the stock of that company held?

Mr. Leeds: The Atchison, Topeka & Santa Fe Railroad, except a sufficient number of shares to qualify directors.

Mr. Matthews: And the Refrigerator Despatch is really a department of the Santa Fe road, is it not?

Mr. Leeds: It is an auxiliary corporation which is owned by the Atchison road.

Mr. Matthews: Its officers are the officers of the Santa Fe Company?

Mr. Leeds: Well, generally, yes, sir.

Mr. Matthews: When was that company organized?

Mr. Leeds: July 1st, 1902.

Mr. Matthews: What particular matters does the Refrig-
442 erator Company take charge of?

Mr. Leeds: General supervision of cars of fruit on the Atchison road.

Mr. Matthews: Anything else? Do they look after diversions?

Mr. Leeds: Well, that is supervision of the cars of a train.

Mr. Matthews: And you maintain an inspection service?

Mr. Leeds: Yes, sir.

Mr. Matthews: Look after the ventilation of cars?

Mr. Leeds: Yes, sir.

Mr. Matthews: How many cars does your company own?

Mr. Leeds: I don't know as I can tell you exactly. We have got right now a little over 6000 cars. However, we have at the present time about 5600 fruit cars, that is, that are suitable for fruit service.

Mr. Matthews. Do you operate over any other road than the Santa Fe?

Mr. Leeds: Our cars go over any road in the country that is of the proper gauge to allow them to move over.

Mr. Matthews: Is there a contract between the Santa Fe Railroad and the Despatch Company?

Mr. Leeds: Yes, sir.

Mr. Matthews: We asked for the production of that. Have you got it here?

443 Mr. Leeds: I have not got it here but can produce it. It has been filed, I think, with the Commission; I don't know whether in connection with a case or whether——

Commissioner Prouty: It has not been filed in connection with this case unless in connection with the answer.

Mr. Norton: He means in connection with other cases.

Mr. Matthews: Is it here?

Mr. Leeds: No, I haven't it.

Commissioner Lane: Is it a mileage contract?

Mr. Norton: It is a contract generally—I have never seen it.

Commissioner Prouty: It may be filed as part of Mr. Leeds' testimony and a copy given to the other side.

Commissioner Lane: What is the character of the contract, is it a contract between the company who owns the cars and the roads, to pay mileage?

Mr. Matthews: I don't know.

Mr. Call: We had the old contract, but we understand there was a modification of it in recent years. There was a contract by which the Santa Fe built the cars and furnished them to it, and the Despatch Company paid five per cent and furnished free mileage, but we understand there is a change in the contract.

444 Commissioner Lane: They are paying that in the tariff now, are they not?

Mr. Norton: Yes. Cannot you state the substance of the contract?

Mr. Matthews: Yes, do that.

Mr. Leeds: The substance of the contract is simply an operating contract of this equipment on the Santa Fe rails, or in fact everywhere the cars operate, giving us the mileage earnings, the refrigeration earnings, whatever they may be, and imposing certain burdens upon us with respect to the maintenance and replacement of the cars as they may be worn out in service, and payment of the expenses of operation of the line out of the revenues so derived. In substance that is the contract.

Mr. Call: You did not say anything about mileage.

Commissioner Lane: Yes, he spoke of mileage. How much do they pay you per mile?

Mr. Leeds: On the portion of the line eastbound—I will say, however, by way of preface, that we get the standard rate of mileage allowed by other refrigerator car lines on the roads, I believe, where our cars operate. East of the Rocky Mountains and west of Chicago it is one cent a mile; west of the Rocky Mountains or west

445 of Albuquerque and El Paso and Deming on loaded cars up to 800 miles, I believe, .6, and above that, three-quarters of a cent, and empty mileage is free.

Mr. Matthews: Have you a record showing the total mileage paid you by the Santa Fe road, or can you furnish that?

Mr. Leeds: I am not sure but I have got that here; I think I have.

Mr. Matthews: You can give it to us afterwards. Is it separated so that you can ascertain the mileage paid on the citrus fruit traffic?

Mr. Leeds: No, sir, it is not.

Mr. Matthews: Are your records kept in such a way that it could be ascertained?

Mr. Leeds: Not mine, no. I think that can be determined, however, approximately correctly.

Mr. Matthews: State briefly what particular traffic you take care of over the Santa Fe rails in refrigerator cars, citrus fruit and deciduous fruit, for instance.

Mr. Leeds: Well, you may say all perishable freight that may be loaded in these cars; it covers California perishable products, it covers canteloupes and fruits from other portions of the system.

446 Mr. Matthews: Melons, vegetables, citrus fruits, celery and asparagus.

Mr. Leeds: Yes, but very little asparagus.

Mr. Norton: Packing house products?

Mr. Leeds: Not in our equipment except as an auxiliary once in a while.

Mr. Matthews: Can you state generally how many cars you handle in a year?

Mr. Leeds: Do you mean all told?

Mr. Matthews: Yes.

Mr. Leeds: I can give that, but not from memory.

Mr. Matthews: Can you furnish us a statement after this hearing showing the number of carloads of each commodity moved say during last year and about the time the movement commenced, say of deciduous fruits and citrus fruits?

Mr. Leeds: I don't know whether I could give it in as much detail as that or not, but I can give you the total number.

Mr. Norton: What is the statement asked for?

Mr. Matthews: The total number of carloads in general of the various perishable commodities moved over the Santa Fe rails during 1909.

Mr. Norton: By this refrigerator company?

447 Mr. Matthews: Yes.

Mr. Norton: That would be quite a job, and what pertinency would it have?

Mr. Matthews: We will develop that as we go along. We have a number of things to show by that. We want to show when the movement commences in reference to these icing stations.

Mr. Norton: If it is helpful or necessary or pertinent, but I do not understand what the objects of this line of examination are.

Commissioner Prouty: Mr. Leeds is not to furnish the information now. You can proceed to examine him and at the close of his examination you may make a memorandum of what you desire him to furnish and we will make some ruling upon it then.

Mr. Matthews: Your cars are pretty well occupied, are they not, all the year round, over the Santa Fe?

Mr. Leeds: Why, no, not all the year.

Mr. Matthews: Most of the year?

Mr. Leeds: In fact, they are not so very busy outside of the busiest period of our movement of citrus fruits here; in other words, it takes a larger equipment to provide for this business here than it
448 would to provide for any other branch of the business that we have.

Mr. Matthews: Does the Santa Fe Despatch operate its own icing stations?

Mr. Leeds: Yes and no. Our contract with the Santa Fe road provides that we shall buy ice of them, but not to exceed what we can secure it for on the market at any time or place. So that they practically are the contractors for the ice, and we in turn for them. We get it at cost.

Mr. Matthews: The Santa Fe road, though, does not operate those icing stations, does it?

Mr. Leeds: Some of them are operated by the Santa Fe Railroad, and some by contract or under icing contract.

Mr. Matthews: During 1908 what icing stations were used in the refrigeration of citrus fruits between San Bernardino and Kansas City?

Mr. Leeds: San Bernardino, the Needles, Winslow—I am naming now the Belen route—Clovis, Winona, Argentine, at the Missouri River, practically Kansas City, and Corwet.

Mr. Matthews: I asked for 1908. You only operated at Needles, Winslow and Argentine?

Mr. Leeds: I will go back and cover that. Up to and including Winslow, the same. Las Vegas, La Junta, Argentine and Corwet.

449 Mr. Matthews: Where is Corwet?

Mr. Leeds: It is our outer yard at Chicago.

Commissioner Prouty: He only asked you for Kansas City and you are giving all the way to Chicago.

Mr. Matthews: When a car is iced, what record is kept at your office as to the amount of ice used?

Mr. Leeds: We have an inspector at each of those points who makes a report by giving the amount, date, car number and so forth, giving the amount of ice used.

Mr. Matthews: Where are those records kept?

Mr. Leeds: They are kept in my office.

Mr. Matthews: In Chicago?

Mr. Leeds: Yes.

Mr. Matthews: The California Fruit Growers' Exchange also keep inspectors at those stations, do they not?

Mr. Leeds: I presume they do at some of them. I don't know whether they do at all or not. I have met parties who said they were fruit inspectors at some of those stations.

Mr. Matthews: Do you keep records showing the average quan-

tity of ice for each car, the number of tons used for each car at each station?

Mr. Leeds: You say the average?

450 Mr. Matthews: Well, the quantity for each car all the way through?

Mr. Leeds: I have just stated that we did.

Mr. Matthews: Can you tell me, is that separated as to the citrus fruit traffic?

Mr. Leeds: It is separated as to individual cars of any traffic.

Mr. Matthews: That is, your record does not show whether it is a citrus fruit car or a deciduous fruit car?

Mr. Leeds: Oh, yes, it does. It is an abstract of the car which carries the whole history of the transaction.

Mr. Matthews: Can you furnish—you do not need to do it now, but can you furnish the quantity of ice in tons used at each ice station between San Bernardino and Kansas City, and including Argentine, in the citrus fruit traffic, separated as to icing stations?

Mr. Leeds: Not very conveniently; it would necessitate going through the records and digging out individually each car, and it would be a pretty difficult matter.

Commissioner Prouty: Would not the better way be to take certain cars and show the quantity of ice put into those cars? Would not that be a better and fairer way?

451 Mr. Leeds: I can give an average proposition covering some cars.

Commissioner Prouty: They might object to an average statement you might make, and might like to know what happened in the case of an individual car. Would it be possible for you to take a car of a certain number and follow it through to Chicago?

Mr. Leeds: If they will give me a car number, certainly.

Mr. Matthews: We will give you car numbers for each month during those two years.

Mr. Call: How long will it take you?

Mr. Leeds: It would be necessary to have that at Chicago; I could not give it to you here.

Mr. Call: In that old case you testified that it took an average of 15 tons to a car to refrigerate a car of citrus fruit from California to Chicago; is that correct?

Mr. Leeds: I think that is very nearly correct.

Mr. Call: How did you obtain that average, did you investigate your records for that purpose?

Mr. Leeds: I presume that I had examined it before that or I would not have testified to it.

Mr. Call: And you still claim that it takes 15 tons of ice

452 to Chicago as an average for the season, or is that just one car during the hot month of August?

Mr. Leeds: You are going to ask me to furnish you certain records?

Mr. Call: Yes.

Mr. Leeds: If I am going to do that, then I am not going to guess at an average.

Mr. Call: Well, you guessed at an average in that case, in the old case?

Mr. Leeds: I don't think I did. I don't know how I arrived at it.

Mr. Call: Was that an average for a year or for a month? Your testimony does not show.

Mr. Leeds: I am not qualified here today to say how I arrived at that, or whether it was wrong.

Mr. Call: You knew this hearing was going along, and have made no investigation to determine it?

Mr. Leeds: I might have made a good deal of investigation and yet failed to find that.

Mr. Call: I will take one station at a time. Take Needles, who operates the icing station at Needles, that is the first station, is it not, after the car leaves San Bernardino?

453 Mr. Leeds: Yes.

Mr. Call: How far is that from San Bernardino?

Mr. Leeds: That is 310 miles.

Mr. Call: Who operates the station?

Mr. Leeds: Well, maybe I will tell you—it is Murphy, anyhow.

Mr. Call: Mr. Murphy?

Mr. Leeds: Yes, sir.

Mr. Call: With whom is the contract, the Despatch Company or the Santa Fe road?

Mr. Leeds: The Santa Fe Road.

Mr. Call: And have you that contract now?

Mr. Leeds: No. By the way, I can answer all those question you are likely to present on that subject and say that none of them are here and I have asked to have them sent here and they have not arrived.

Mr. Call: When will they be here?

Mr. Leeds: That I am unable to tell you, but they will be here in due course of time.

Mr. Call: You were served with a notice three weeks ago to produce them?

Mr. Leeds: No, sir, not that I remember of. I have not

454 seen any such notice. I have been away from home.

Mr. Call: We have the acceptance of your office or your attorneys of such notice.

Commissioner Prouty: What is it you are after?

Mr. Matthews: We asked them to produce contracts with the owners of these icing stations where the fruit is iced.

Mr. Norton: They have been ordered and have been expected here every day for three days. The notice was served on the Despatch Company and the contracts are with the Santa Fe Company.

Mr. Matthews: The same notice was served on the Santa Fe road.

Commissioner Prouty: Well, Mr. Norton says the contracts are supposed to be on the way here.

Mr. Matthews: What do you pay or what does the Santa Fe pay at Needles, give it to me for 1908 and 1909.

Mr. Leeds: I cannot give you those figures exactly from memory. The contract will show when it arrives.

Mr. Norton: You can give him the prices approximately?
Mr. Leeds: In round numbers, $3.65 per ton.
Mr. Norton: That is at Needles?
Mr. Leeds: Yes.
455 Mr. Norton: As nearly as you can remember.
Mr. Matthews: And that price was made in 1908-1909?
Mr. Leeds: Yes.
Mr. Matthews: That is, in the bunkers?
Mr. Leeds: Yes, sir.
Commissioner Prouty: Where does that ice come from?
Mr. Leeds: It is manufactured at Needles.
Mr. Matthews: Mr. Murphy owns the plant?
Mr. Leeds: As near as I know.
Mr. Matthews: And operates it under contract with the road?
Mr. Leeds: Yes.
Mr. Matthews: Take the next station, Winslow, is that the next station used during 1908?
Mr. Leeds: Yes.
Mr. Matthews: How far is that from The Needles?
Mr. Leeds: It is 292 miles, I believe.
Mr. Matthews: Who operates that icing station?
Mr. Leeds: It is operated by the Navajo Ice & Cold Storage Company.
Mr. Matthews: Have they a contract with the Santa Fe road?
Mr. Leeds: Yes.
456 Mr. Matthews: You will produce that contract with the other?
Mr. Leeds: Yes, sir.
Mr. Matthews: What is your recollection of the price paid for the ice at Winslow?
Mr. Leeds: The original contract on that was for $2.70 per ton based on $2.00 fuel, $2.00 per ton for coal.
Mr. Matthews: What do you mean, based on $2 oil?
Mr. Leeds: I do not say for oil, but coal; and then there is a sliding scale which I am unable to say as to the up or down side of the column.
Mr. Matthews: What is the next station used during 1908?
Mr. Leeds: The next station used during 1908 is Las Vegas.
Mr. Matthews: How far is that from Winslow?
Mr. Leeds: That is 418 miles.
Mr. Matthews: Who operates the ice plant there?
Mr. Leeds: The Agua-Pura Ice & Coal Storage Company.
Mr. Matthews: And have they a contract with your road?
Mr. Leeds: Yes.
Mr. Matthews: What is the charge under that contract?
Mr. Leeds: We pay in the bunkers of the car there, $1.75.
Mr. Matthews: The next station?
Mr. Leeds: La Junta, Colorado.
457 Mr. Matthews: Who operates that?
Mr. Leeds: That is operated by the same concern; they operate the two stations.

Mr. Matthews: They have a contract also with the Santa Fe road?

Mr. Leeds: Yes, sir.

Mr. Matthews: What do you pay?

Mr. Leeds: The price is the same with the addition of transportation on the ice from the Las Vegas Hot Springs Canyon to La Junta.

Mr. Matthews: What is the amount of that transportation?

Mr. Leeds: It is 215 miles at the company material rates, and I think it is five mills.

Mr. Matthews: $5?

Mr. Leeds: Five mills per ton per mile, and frequently we are obliged to get ice from other sources at La Junta; sometimes the Hot Springs Canyon fails to produce a crop, and then the price is an indefinite quantity, according to wherever we have to secure ice.

Mr. Matthews: Under that contract do they obligate themselves to produce any particular quantity?

Mr. Leeds: No, they cannot.

458 Mr. Matthews: To what extent has ice been shipped into that station during 1908 and 1909, just approximately?

Mr. Leeds: Well, 1909, practically all of our ice produced or used at that station was produced, I believe, at Lake George, Colorado, that is west of Colorado Springs. The ice was delivered to us at Colorado Springs, and I think we used some at that point coming from Longmont.

Mr. Matthews: Longmont, Colorado?

Mr. Norton: Palmer Lake.

Mr. Leeds: It is below Palmer Lake, the first station. Well, we bought 4000 tons of ice there, and I don't know where it went to.

Mr. Matthews: Do you know what that ice cost you?

Mr. Leeds: No, I don't remember what the Longmont ice cost us. The Lake George ice cost us, a part of it, 95 cents, and a part of it $1.15, a ton at Colorado Springs.

Mr. Matthews: What is your estimate now of the average cost of all the ice used at La Junta during 1908 or 1909?

Mr. Leeds: 1908—you mean, let me understand you—do you mean the crop of 1908 and 1909?

Mr. Matthews: Yes, separately.

Mr. Leeds: Well, we move this citrus fruit——

459 Mr. Matthews: Leave out 1909. Take 1908. You shipped in ice during that time. Do you remember——

Mr. Leeds: No, I am ahead of the hounds. The La Junta ice in 1908, I think it was almost entirely supplied from Las Vegas Hot Springs.

Mr. Matthews: Move on to Argentine. How many miles is that?

Mr. Leeds: That is 571 miles.

Mr. Norton: Would it not be better to take the ice for the season of 1908-9?

Mr. Matthews: During the year 1908.

Mr. Norton: Very well.

Mr. Leeds: 1909 will take care of itself when we get to it.

Mr. Matthews: With whom was the contract at Argentine?

Mr. Leeds: Our contract at Argentine was with the Santa Fe Icing Company.

Mr. Matthews: Is that controlled by the Santa Fe?

Mr. Leeds: It is under a contract and it is operated by the Santa Fe Car Icing Company.

Mr. Matthews: What do you pay a ton there?

Mr. Leeds: I believe we pay $2.25.

Mr. Norton: That is at Kansas City?

Mr. Leeds: Yes, that is at Kansas City.

460 Mr. Matthews: Cars moving to St. Louis or Chicago do not require any ice after they leave Kansas City, do they?

Mr. Leeds: Ordinarily, no.

Mr. Matthews: They go right through?

Mr. Leeds: Yes.

Mr. Matthews: Most of this citrus fruit moves in the spring months, does it not?—March, April and May, and a very little of it in July and August?

Commissioner Prouty: The statements which have been introduced show exactly.

Mr. Matthews: That is just preliminary. That is true, is it not, Mr. Leeds?

Mr. Leeds: Why, ordinarily in the past seasons we have always believed, but this was only approximate, we have always calculated that half of the crop had been moved out on the 31st of March.

Mr. Matthews: Have you produced the balance sheets of the Santa Fe Refrigerator Despatch Company?

Mr. Leeds: No, I have not, and we do not—I have got four years of those balance sheets among my papers in Los Angeles.

Mr. Matthews: Can you produce them?

461 Mr. Leeds: Yes.

Mr. Matthews: Will you do so?

Mr. Leeds: I will do so in the morning.

Mr. Matthews: What, in your opinion, would the cost of the ice bear to the total refrigeration charge, how much of the expense is it?

Mr. Leeds: Do you mean to say how much of the gross earnings of the refrigerator line the refrigeration earnings amount to?

Mr. Matthews: No,——

Commissioner Prouty: No, he wants to know what part of a fair refrigeration charge the cost of the ice would be.

Mr. Leeds: Well, we claim that our proportion is fair and that it has cost us about 64 per cent.

Commissioner Prouty: That is, the ice is about 64 per cent of your charge?

Mr. Leeds: Yes.

Mr. Matthews: Do you mean the charge, or 64 per cent of the cost of all the items which go to make up the cost?

Mr. Leeds: No.

Mr. Matthews: Do you mean 64 per cent of the total charge,

that is, if it costs $75 to New York, the cost of the ice in
462 that movement is 64 per cent?

Commissioner Prouty: Mr. Leeds perhaps does not know about east of Chicago.

Mr. Matthews: Take $62.50 to Chicago, then, on citrus fruits.

Mr. Leeds: I think that is right.

Mr. Matthews: And will you please tell me in general what the other items of expense consist of, just generally?

Mr. Leeds: Do you mean in refrigeration?

Mr. Matthews: What you include as chargeable against this refrigeration service.

Mr. Leeds: Starting primarily this car is a refrigerator car built for that purpose. Everything connected with the operation and construction and maintenance of that car, which makes it a refrigerator car, is chargeable to refrigeration.

Commissioner Prouty: But you use the same car, whether you move this fruit under refrigeration or ventilation?

Mr. Leeds: Yes, sir.

Commissioner Prouty: Does it cost you any more to maintain the cars to refrigerate the fruit?

Mr. Leeds: I say incidentally this car is a refrigerator car, it is built for that purpose; it is the dilability of carrier that it has to use it under ventilation.

463 Commissioner Prouty: That should attach to your ventilation rate as well as to your refrigeration rate.

Mr. Matthews: In making up this rate of $62.50 to Chicago, you have taken into consideration all the elements, have you not, I assume?

Mr. Leeds: I don't know whether there was any special item considered independent of anything else. The rate was made and I found it in existence when I took charge of the business. I don't know just exactly how it was made——

Mr. Matthews: You don't know how it was made or whether it was guessed at or how it was?

Mr. Leeds: I know this, originally it was based on 26,000 pounds. I know that subsequently it was made to cover 27,648 pounds, and it now covers 32,000 pounds.

Mr. Matthews: That is all you know about the making of the rate?

Mr. Leeds: Well, we consider that a whole lot, yes, sir.

Mr. Matthews: What other items do you charge against this refrigeration rate? You have given 64 per cent for the cost of the ice. I want to find what the other items are.

Mr. Leeds: Well, everything in the way of inspection is mainly inaugurated on account of the use of this car or rather on
464 account of refrigeration. Ordinarily I presume that service would not have been taxed up. There are a good many items connected with the operation of a refrigerator line which do not appear, perhaps, in our balance sheets. For example, the expense of telegraphing, which we do in connection with this service, is a matter that——

Mr. Matthews: Do you mean the expense attached to the diversions?

Mr. Leeds: I do not mean diversions. I mean everything connected with the handling of this business as a refrigeration proposition. You have got to handle these wires, and the wires are of value to you, or we would not use them.

Mr. Matthews: You do not pay anything for that telegraph service, do you?

Mr. Leeds: We maintain it, or at least the Santa Fe do.

Mr. Matthews: They are the Santa Fe wires and they are there anyhow?

Mr. Leeds: Oh, yes, I suppose the road is there anyhow, and you might——

Mr. Norton: I submit it is a waste of time to pursue an inquiry on the theory that the cost of ice and the cost of this service is all we are entitled to be paid.

465 Commissioner Prouty: Mr. Leeds is able to take care of himself on this, I think. Do you render any additional service in case of refrigeration which does not attach in case of ventilation, as to the inspection of the car, the tracing of the shipment, the use of the telegraph, and all that?

Mr. Leeds: No, I do not think we could segregate one from the other; we are operating a refrigerator car line, and we are doing this service for the Atchison road, and it embraces not only refrigeration, but it embraces the handling of this business under ventilation, and the only thing I could say is that this particular branch of the service should bear its proportion of the burden, whatever it may be.

Mr. Matthews: The burden of what?

Mr. Leeds: I said whatever burden there might be.

Mr. Matthews: I am trying to find out what these burdens are. What other item do you charge against this rate? You mentioned the use of this car, the cost of the ice. What else is there, and this telegraph expense?

Mr. Leeds: We maintain this car as a refrigerator car, and I should say only about 30 per cent of the loads, on a guess, that move in that car are under refrigeration. Now, this refrigerating device is certainly detrimental with reference to the movement of

466 any other load in that car, and anything that makes this car a burden on account of refrigeration should be chargeable to refrigeration, or at least should be compensated for in addition to what the car would earn if it were traveling under ventilation.

Mr. Matthews: I want to find out what those items are, that is the thing I am after. What do you charge——

Mr. Leeds: Well, 17¼ per cent of the floor space of that car is occupied with the ice bunkers; it is worth 17¼ per cent of the value of that car for the movement of any other load that moves in it.

Mr. Matthews: What has the Refrigerator Despatch Company to do with that? They do not use the room, either.

Mr. Leeds: The Refrigerator Despatch Company are a company operating these cars for the Santa Fe Railroad.

Mr. Matthews: That is necessary in the car in its construction, because it is a refrigerator car, is it not?

Mr. Leeds: True, but it is our disability, or at least it is the carrier's disability if he uses it for any other purpose.

Mr. Matthews: What per cent of the $62.50 do you charge up to that item?

Mr. Leeds: I do not segregate the charge with reference
467 to whether it is 15 or ten per cent of that which should be charged up or not.

Mr. Matthews: You have said that the cost of the ice is 64 per cent of the total refrigeration charge, and I want to find what you base the rest of it on. That is plain enough.

Mr. Leeds: Aren't we entitled to some profit?

Mr. Matthews: That is what I am trying to get at. What is the profit?

Mr. Leeds: I can tell you what percentage of our gross revenue comes from refrigeration.

Mr. Matthews: I do not want the percentage, but the details. How much do you charge up on account of ventilation, or on account of inspection?

Mr. Leeds: I do not segregate those items from the handling of other perishable freight.

Mr. Matthews: That is, you keep them suspended in the air between the freight rate and the refrigeration of that car?

Mr. Leeds: Yes, sir, suspended in mid air.

Mr. Matthews: Any other items you can think of outside of those you have mentioned which are chargeable against the refrigeration rate?

Mr. Leeds: I don't know—do you mean as a distinct item?

468 Mr. Matthews: What you consider a proper charge against this refrigeration, which is not compensated for by the mileage.

Mr. Leeds: Well, I will answer that question by saying that the balance sheet under which we keep our accounts does not separate one portion of the expense of our service from another portion of the expense of our service, so far as its application or being charged against one thing or the other is concerned, so I cannot give it to you.

Mr. Matthews: You just put on one side of the ledger your refrigeration charges, what you receive, and the mileage received, and charge all the other items on the other side, and that is how you get your profit and loss?

Mr. Leeds: That is about right.

Mr. Matthews: Do you charge up depreciation on the cars?

Mr. Leeds: Yes.

Mr. Matthews: How much?

Mr. Leeds: Five per cent. It is not enough.

Mr. Matthews: It is not enough?

Mr. Leeds: No, sir.

Mr. Matthews: Why don't you charge more?

469 Mr. Leeds: Well, I have recommended it.

Mr. Matthews: And they have not taken your recommendation?

Mr. Leeds: Not yet.

Mr. Matthews: What do you pay for repairs per year?

Mr. Leeds: I cannot tell you definitely, but something over $300,000 on our equipment.

Mr. Matthews: That is in addition to depreciation?

Mr. Leeds: Yes. That is, that is for current running repairs.

Mr. Matthews: And you charge those on the other side of the ledger?

Mr. Leeds It is expenses.

Mr. Matthews: You have not apportioned either depreciation, repairs or any other item between ventilation and refrigeration?

Mr. Leeds: No, sir.

Mr. Matthews: And only 30 per cent of your movement moves under refrigeration, that is right?

Mr. Leeds: I did not say only 30 per cent of my movement, I said only 30 per cent of the loads moved in these cars were under refrigeration. Now, if you want to know how much of your citrus fruit moves under refrigeration, I can tell you that.

Mr. Matthews: We have got that. How about the cost of cleaning the cars? Do you take care of that or do you contract
470 with the Santa Fe to do that?

Mr. Leeds: We pay for that.

Mr. Matthews: And under this same contract are you required to pay for the depreciation and repairs and inspection, and these other items?

Mr. Leeds: Yes, sir.

Mr. Matthews: You look after diversions, don't you?

Mr. Matthews: Yes, sir.

Mr. Matthews: And you pay the expense that those diversions entail under your contract?

Mr. Leeds: So far as the clerical operation of that desk is concerned in my office I pay that on my pay roll, yes, sir; outside of that, no.

Mr. Matthews: Does the Santa Fe make any charge against you for office expenses or anything of that kind, or supplies?

Mr. Leeds: I pay for my own office supplies; that is the supplies which pertain to the refrigeration car line service. I pay for the office rent of my office in Chicago out of my earnings, and——

Mr Matthews: I suppose you have some figures showing the average of what it costs you, for instance, to ice a car of citrus fruit from Los Angeles to Chicago?

471 Mr. Leeds: Not as a distinct item, no.

Mr. Matthews: What in your opinion would your record show the average profit to be of the icing of a car of citrus fruit from Los Angeles to Chicago if you took into consideration only the cost of the ice?

Mr. Leeds: You mean the difference between what I receive for refrigeration and the actual cost of the materials used?

Mr. Matthews: No, just the ice.

Mr. Leeds: Well, materials used is ice, in your particular case.

Mr. Matthews: Take this $62.50, taking into consideration only the cost of the ice, how much of a profit would you show on that $62.50 rate?

Mr. Norton: What is that question?

Mr. Leeds: He wants to know how much profit over the cost of ice I would show. I cannot answer that except to guess at it.

Mr. Matthews: What is your best guess, now?

Mr. Leeds: It would be necessary I think to take the business covering a period of time, because we are subject to a good many contingencies that do not occur in the normal movement of a car of stuff.

472 Mr. Matthews: I want the normal movement in 1908.

Mr. Leeds: Well, some portions of 1908 might not have been normal. What I refer to is this: You frequently consign a car of stuff to some large intermediate point along the line. We usually deliver that car at the point of the first destination, if it arrives there before diversion is made, and that car is delivered on the team track or delivery track pretty well filled with ice, I think ordinarily nearly full. You may hold that car there for 48 hours, you have got a right to hold it there without any penalty for car service for 48 hours, and then we divert it, or you divert it, and it goes forward without any cost of ice to your shipper. We re-ice it and send it forward——

Mr. Matthews: Do you hold that for 48 hours without additional icing charge?

Mr. Leeds: Oh, yes, if it is diverted.

Mr. Matthews: If it is diverted?

Mr. Leeds: Yes, sir, and you can hold that car up for 48 hours at each destination point, as many diversions as you want to make on it. Now, you send out a good many of that class of cars, and we may have a washout or derailment or other detention, and we
473 may have to detour cars on account of interruption; now, I don't know what a year's business would show up on that, exactly.

Mr. Matthews: Leave out those isolated cases and give me an average car.

Mr. Leeds: Those all come inside, within the cost, you understand.

Commissioner Prouty: Have you any opinion as to what the ice costs you on your shipments to Chicago, your refrigerated shipments to Chicago?

Mr. Matthews: This fruit?

Commissioner Prouty: Yes.

Mr. Leeds: I have not figured it up exactly in that shape, and I could not give it offhand. I could tell you what it is, I guess, without so very much trouble.

Commissioner Prouty: But you do not care to make an estimate?

Mr. Leeds: I think it takes about, just on a guess, 14 tons of ice.

Commissioner Prouty: And that costs you on an average how much?

Mr. Leeds: In the year 1909 it cost us $4.14.

Commissioner Prouty: You mean $4.14 in the bunker?

474 Mr. Leeds: Yes.

Commissioner Prouty: Was that the average cost of all the ice which your company bought of the Santa Fe company?

Mr. Leeds: That was the average cost of all ice used on the Santa Fe system for refrigeration purposes during the year 1909.

Commissioner Prouty: You do not know whether it would be the average cost of ice used in refrigerating citrus fruits from here to Chicago?

Mr. Leeds: It probably would be a little more than that, because a larger proportion of the ice used in that refrigeration comes from the most expensive ice which we use.

Commissioner Prouty: What does your ice cost you in Los Angeles, here?

Mr. Leeds: $4.

Commissioner Prouty: Do you take ice from Los Angeles into the country?

Mr. Leeds: No.

Commissioner Prouty: Do you ice the car and send it down into the country?

Mr. Leeds: If we do, there is a charge on that of $7.50 a car, I think. Our ice at San Bernardino costs us a little more than
475 that because there is some transportation involved in that which makes it more expensive.

Commissioner Prouty: We will stop here until tomorrow morning at ten o'clock, and in the meantime you can make your answer more definitely.

Mr. Norton: I would like, if the Commission please, to ask again that we get from the complainants the highest and lowest prices that they have received on oranges and lemons separately for several years in some of the leading markets in each of these three belts they have stated. We find these averages so unsatisfactory that I think they ought to be eliminated, so far as may be possible.

Commissioner Prouty: Mr. Call, can you furnish the highest price and the lowest price received on oranges and lemons disposed of in these various markets during the various years?

Mr. Call: During how many years?

Mr. Norton: Three or four years.

Mr. J. H. Call: It would not tend to show the average price of this fruit.

Commissioner Prouty: We do not think that is of any importance, Mr. Norton.

Mr. Norton: We make this point. I am informed that
476 they are selling lemons now at $15 to $17 a box.

Commissioner Prouty: The testimony was they were getting from $1 to $1.50 more than they did last year.

Mr. Norton: They have put in tabulation showing the averages that they have received at different places, but those are averages of averages.

Commissioner Prouty: Suppose they did get $17 a box for a single carload, that would not have any bearing upon this question.

What we want to know is the average, what the average price has been, and if these average statements are satisfactory, they will be proper and satisfactory statements to be introduced and used.

Mr. Norton: But these statements I am asking for would throw light on the tabulations we already have.

Mr. Durbrow: I make this suggestion in addition to what Mr. Norton has said: If we have the average price that has been received by these people for their oranges and lemons, in the manner in which they have given it to us, it does not throw any light upon this question, because we do not know how many boxes of lemons were sold at a certain price, whereas, if we had the maximum and minimum price——

Commissioner Prouty: I understand the average is the
477 actual average that they have received?

Mr. J. H. Call: It is an actual average of all sales.

Commissioner Prouty: Of all you have sold. You do not take the highest and lowest and divide by two?

Mr. J. H. Call: No.

Commissioner Prouty: Those are actual prices?

Mr. J. H. Call: Yes.

Commissioner Prouty: And that is what we want to know.

Mr. Norton: But I understand they will be reported here, one sale at $2.05, or say $1.50, and that may contain an enormous number of boxes which are sold at a low rate, and the next sale may be high.

Commissioner Prouty: I do not understand that at all. They take the number of boxes in gross that they have sold, and the amount of money they have got, and divide the total amount of money by the total number of boxes, and give you the average price.

Mr. Call: That is exactly right.

Mr. Durbrow: May I ask Mr. Call this one question, if the general average he has shown here has been arrived at by simply taking the total amount received from their sales, and dividing by the total number of boxes sold?

478 Mr. Chase: And the report which we furnished of which the Commissioners and counsel have copies, shows that, if you will investigate it.

(At 4:50 o'clock p. m. the further hearing of the above entitled matter was adjourned until Friday, March 25th, at ten o'clock a. m.)

a Interstate Commerce Commission, Washington.

I, John H. Marble, Secretary of the Interstate Commerce Commission, do hereby certify that the record hereto attached contains a true copy of the original transcript of the stenographer's notes of that portion of the testimony taken before said Commission on March 25 and 26, 1910, at Los Angeles, California, in the case of Arlington Heights Fruit Exchange and others against Southern Pacific Company and others, docket No. 3000, the original of which is now on file and of record in the office of this Commission.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this 15th day of April, 1912.

[Seal Interstate Commerce Commission. 1887.]

JOHN H. MARBLE, *Secretary.*

479 LOS ANGELES, CALIFORNIA, *March* 25, 1910.

Met pursuant to adjournment at ten o'clock a. m.
Present: Parties as before.

Mr. Call: While we are wainting for the witness I will submit the amended tabulation of the California Fruit Growers Exchange, showing the monthly sales in the various markets asked by counsel for the Defendants including New York, with the averages brought down, including New York.

Commissioner Prouty: Does it differ in any respect, except by the addition of New York?

Mr. Call: I have taken the same table and added New York and brought down the average.

(A paper offered in evidence, marked Complainants' Exhibit Number 22, received in evidence March 25, 1910, and same is hereto attached.)

Mr. Call: Now in Exhibit 8, the copy of the map which I handed to the reporter, it did not contain in red ink the average prices which I thought it did when I handed it in, the average prices in addition to the railroad rates, which brings it before the eye perhaps a little more clearly, I now give you copies of that.

480 (The paper was received and marked "Substituted for Complainants' Exhibit Number 8.")

Mr. Call: And I also submit printed copies of Exhibit Number 5, which we offered first in typewritten form.

(The paper was received and marked "Substituted for Complainants' Exhibit Number 5.")

Commissioner Prouty: Has Mr. Leeds come in?

Mr. Durbrow: While we are waiting for Mr. Leeds I asked to have Mr. Teague here.

Commissioner Prouty: Is Mr. Teague here?

Mr. Call: Mr. Teague is here.

Commissioner Prouty: He may step forward and be sworn.

C. C. TEAGUE, called as a witness, being duly sworn, testified as follows:

Direct examination:

Mr. Durbrow: Will you please state in a general way what your business is?

Mr. Teague: My business is composed principally of the lemon business. We, however, are also shippers of walnuts and growers of sugar beets and lima beans and olives. Walnuts and lemons are our principal business.

481 Mr. Durbrow: Are you a member of this exchange here?

Mr. Teague: No, sir.

Mr. Durbrow: You are not?

Mr. Teague: No, sir.

Mr. Durbrow: And you have a concern of your own, have you not?

Mr. Teague: The Limonera Company is the company and I am General Manager of the Limonera Company.

Mr. Durbrow: How long has that concern been in business?

Mr. Teague: I believe it was incorporated in 1893, 1892 or 1893. The groves I think have been planted seventeen years this spring.

Mr. Durbrow: How long have you been engaged in the lemon business?

Mr. Teague: Seventeen years.

Mr. Durbrow: I will ask if you will state the capitalization of the Limonera Company?

Mr. Teague: One million dollars.

Mr. Durbrow: I would like to ask you if you will state please the dividends that that company paid for 1909?

Commissioner Prouty: No, we will not go into the financial condition of any of these companies here. You may ask him

482 whether his business has been prosperous or not.

Mr. Durbrow: Well, I will ask you if your business has been profitable.

Mr. Teague: Yes, sir; I think it has.

Mr. Durbrow: May I ask you the average price per car that you have received for your lemons for the last three years?

Mr. Teague: Anticipating that you might ask me some such question as that, last evening—I did not get the word that you wanted me until last evening at six o'clock, and I went to the office and figured up for the past two years and I have that information, but I cannot give you the other because I have not compiled it.

Mr. Durbrow: Let me have the information as you have compiled it.

Commissioner Prouty: By the last two seasons you mean 1907-8 and 1908-9?

Mr. Teague: The years 1908 and 1909 or the shipping seasons, 1907-8, 1908-9. The fruit season usually is termed from September to September and the figures I have complied are along that basis.

Mr. Durbrow: Let us have that.

Mr. Teague: The average price per box, did you inquire?
483 Mr. Durbrow: Yes.
Mr. Teague: The average price per box for the last two years f. o. b. Santa Paula, which is the information you wanted, is $2.55 for all grades.
Mr. Durbrow: And have you it segregated for a year?
Mr. Teague: No, I just averaged the two years. This past year was a little better than the year before, a slight increase in our business. I just put the two years together.
Mr. Durbrow: May I ask you if your concern has received higher or lower prices for your lemons in eastern markets than have been received for the Italian product for the last three years?
Mr. Teague: I think, sir, that we have received higher prices than the Italian product has brought.
Mr. Durbrow: I believe you stated in this address, a copy of which I have here, from 50 cents to $1.00 per box higher than the Italian product?
Mr. Teague: Yes, sir.
Mr. Durbrow: Why have you been able to obtain higher prices than for Italian or Sicilian lemons in the eastern markets?
Mr. Teague: Well, that I should say is rather a long story.
Mr. Durbrow: Just in a general way; it is because of the improved quality of the fruit as I understand it, but I would
484 like to have your idea.
Mr. Teague: Yes, it is because of some superiority in the fruit itself and an established reputation and trade that are willing to pay us a better price. That goes back to matters of handling and production and proper location, and all of those things, I think, have some bearing.
Mr. Durbrow: May I ask you if the quality of the California fruit has improved materially in the last ten years?
Mr. Teague: I believe it has, in the last ten years, generally.
Commissioner Prouty: How has the quality improved? You raise the same kind of a lemon.
Mr. Teague: Well growers naturally improve some in their method of handling—they are intelligent men the same as are engaged in other lines of business and they profit by mistakes they make and learn, and by using some better methods.
Commissioner Prouty: Is the lemon itself now the same lemon as it was ten years ago?
Mr. Teague: You are speaking of varieties?
Commissioner Prouty: Yes.
Mr. Teague: Practically the same; the Eureka, Lisbon——
Commissioner Prouty: Is the improvement in the raising
485 of the lemon or marketing of the lemon?
Mr. Teague: I think there has been some improvement probably in both.
Commissioner Prouty: A well cultivated lemon is better than a poorly cultivated lemon, is it?
Mr. Teague: Undoubtedly.
Mr. Durbrow: I would like to ask if you have increased the num-

ber of boxes of lemons per acre produced by your concern by these scientific methods of cultivation?

Mr. Teague: I think we have; at least we are producing more fruit than the average grower, a good deal more fruit. I presume the methods have something to do with it. Possibly proper locations have something to do with it, proper climatic locations.

Mr. Durbrow: May I ask you what is the average yield per acre of lemons?

Commissioner Prouty: You are referring now to his grove?

Mr. Durbrow: Yes, I am speaking of this gentleman's groves.

Mr. Teague: What is our average yield per acre, that of the Limonera Company?

Mr. Durbrow: Yes.

Mr. Teague: The average production per acre of the Limonera Company for the last two years was 356.6 boxes.

486 Mr. Durbrow: Per acre?

Mr. Teague: Per acre.

Mr. Durbrow: Is that packed boxes?

Mr. Teague: Packed boxes.

Mr. Norton: How many years?

Mr. Teague: For the past two years.

Mr. Durbrow: I was very much interested in view of some of the testimony that has been adduced at this hearing to read of your description of a ten acre orchard that had been neglected and had never been cultivated and had never been fertilized and never had been irrigated and never had been pruned, which was taken over by you and cultivated and given proper attention. Do you recall the instance?

Mr. Teague: Yes, sir; I recall having had an orchard of that character.

Mr. Durbrow: Will you please tell the Commissioner what your experience was with that neglected orchard and the returns you received from that orchard the first year after it had received proper attention?

Mr. Teague: Well, the grove referred to was an old lemon grove that had been in the hands of a grower that did not understand anything about the lemon business, and did not pretend to,

487 and he was unfortunate enough to have no water; there was no water on the grove, the grove was not covered by water. Of course that is a great disadvantage in an arid country. We all know that water is essential to growing lemons. This grove when I took it, I think, was the worst neglected grove that I ever saw; in fact, I thought that I would seriously consider grubbing it up; but concluded that I would try to give it good attention and therefore cultivated it and irrigated it and fertilized it and pruned it and freed it from scale and insect pests, poisoned the gophers and squirrels that the orchard was infested with; and my recollection is that that grove paid me, that ten acre grove, about fifteen hundred dollars the first year.

Commissioner Prouty: Do you remember how much the yield was per acre, how many packed boxes?

Mr. Teague: I cannot—I have not that in mind. I did not anticipate any such question and I do not recall, sir. I simply remember that incident of having bought the grove out from—it produced fairly well as soon as it was given good attention and it surprised me how it responded from bad treatment. However, I have never seen a grove in as bad condition in my experience in the lemon business as when I took it.

488 Mr. Durbrow: But you had a net profit of fifteen hundred dollars from that orchard the first year?

Mr. Teague: Yes, sir.

Mr. Durbrow: How quickly does a neglected orchard such as that respond to proper attention and treatment?

Mr. Teague: Well it indicated from that that it responded very quickly.

Mr. Durbrow: Immediately, did it not?

Mr. Teague: Well the first year I got very good results from it, I considered.

Mr. Durbrow: Are you setting out more lemon orchards?

Mr. Teague: Yes, sir.

Mr. Durbrow: And what is the entire acreage controlled by your company, if you please?

Mr. Teague: We have altogether in the neighborhood of eighteen hundred acres that we are farming in all kinds of products.

Mr. Durbrow: That is all.

Mr. Norton: Can you state the cost of bringing an acre to bearing?

Mr. Teague: An acre of lemons?

Mr. Norton: Yes.

489 Mr. Teague: Well of course you would have to have some given basis to start with, land values and water values; I don't know just exactly what your question contemplates.

Mr. Norton: In your situation and in your locality if you were to start out to make a lemon grove what would you consider the cost of bringing it to bearing per acre?

Mr. Teague: Including the purchase price of the land and the water, I presume?

Mr. Norton: Yes.

Mr. Teague: I should say at the present time at the prevailing price of land in our locality it would cost in the neighborhood of $900.00 an acre to bring an orchard to bearing on a self-supporting basis.

Mr. Norton: The land prices are higher now than they were formerly?

Mr. Teague: Yes, sir.

Mr. Norton: What is the cast per acre to maintain from year to year?

Mr. Teague: Including what?

Mr. Norton: Well—including everything.

Mr. Teague: Including everything, the cost of picking the fruit and shipping it and everything, based upon the figures that

490 you inquired about, our production?

Mr. Norton: Up to the picking, up to the time the fruit is ready to be taken off.

Mr. Teague: And off?

Mr. Norton: No, up to the time you are ready to take it off, to produce the fruit.

Mr. Teague: Well our cost per acre the past two years, the Limonera Company's cost of our three hundred acres of full bearing lemons, not including picking, packing house cost or cost of marketing, was $221.84 an acre.

Mr. Norton: Do you know anything about the budding back of any lemon orchards to oranges?

Mr. Teague: I know that there have been a good many orchards budded back in the lower country; not so much in our locality as we are the principal growers there. There perhaps is one hundred acres of lemons all told in our district outside of ourselves.

Mr. Norton: Why were they budded back in the lower country?

Mr. Teague: Presumably because they were not profitable; that is what I suppose.

Mr. Norton: Is the lower country the kind of country in which to grow lemons?

491 Mr. Teague: They are growing lemons very successfully there now and have some very good growers in that country and their fruit is doing fairly well.

Mr. Norton: Do they suffer from frosts there?

Mr. Teague: When I speak of the lower country perhaps you may have misunderstood my intention there. We are up the coast and they are down the coast, down this way.

Mr. Norton: I thought you meant low land.

Mr. Teague: No, I did not mean that. We speak of the people living down in the San Gabriel Valley and the district from Whittier and clear through there as the lower country. We speak of Los Angeles as the lower country.

Mr. Norton: How far down the coast are you?

Mr. Teague: We are in a direct line, about sixty-five miles from Los Angeles.

Mr. Norton: South?

Mr. Teague: No, sir; north and a little west.

Mr. Norton: Santa Paula?

Mr. Teague: Yes, sir.

Mr. Norton: The service which you receive for transporting lemons and caring for them in transit is the same as is given for oranges?

492 Mr. Teague: Do you refer to the railroad service?

Mr. Norton: Railroad service, yes. The lemon receives the same service that the orange does?

Mr. Teague: Well I don't know that I am competent to answer that question in that I am not in the orange business. I do not ship a box of oranges and I therefore would hardly be qualified to say.

Mr. Norton: Oh well you have a general knowledge of the way oranges are shipped out of this country, have you not?

Mr. Teague: Yes, sir; I think the service is supposed to be quite similar for the lemon and orange so far as I know.

Mr. Norton: Do you know of any reason why the charge for the service on lemons should be any different than that imposed on oranges?

Mr. Call: Are you talking about the railroad rate?

Mr. Norton: Yes.

Mr. Call: I do not know that I have any objection but——

Commissioner Prouty: He may answer the question if he knows any reason why the rate should be different, he may state that, and if he does not he may say so.

Mr. Teague: Well except as I understand it has been rather the policy of the railroads to make rates consistent with the
493 needs of different industries. In fact I heard the President of the Santa Fe Railroad say once that the proper basis of making rates was to charge all the traffic could bear.

Mr. Norton: Will your lemon industry as you have been relating it for the last two years bear the charge that oranges bear?

Mr. Teague: Possibly in our individual case we might be able to, yes, sir; the Limonera Company perhaps could pay that rate and pay some dividend to the stockholders.

Mr. Norton: That is all.

Mr. Durbrow: Then may I ask in view of the last answer, what dividends were paid to your stockh[illegible]s?

Commissioner Prouty: No, we [illegible]t go into the question of dividends. This company is engag[illegible] a great many other occupations besides marketing lemons. We will not take any time on that.

Mr. Durbrow: May I ask the witness another question, which I had in mind. The company which you represent produces so many boxes per acre. I want to ask you if you have in mind a particular twenty-acre tract that is owned by you that has been properly cultivated and so forth and ask you if you can tell me
what number of boxes were raised on that twenty acres in a
494 year. It is the orchard referred to in your address.

Mr. Teague: I do not recall that address; I have made several before bodies of fruit growers.

Mr. Durbrow: This may refresh your memory (handing book).

Commissioner Prouty: We will not take up any time with what was done with a few acres of lemons. There is no substantial disagreement in the testimony of this witness and that produced by the Complainants. We will not spend time here to take up the results of the cultivation of particular pieces of lemon orchards.

Mr. Durbrow: I think it is very material to show what these lemon orchards produce per acre. There is a great discrepancy between this witness' testimony and Mr. Hampton's testimony of 97 boxes.

Commissioner Prouty: Mr. Hampton's testimony speaks for itself. His 97 boxes was an average and he showed how he produced the result.

Cross-examination:

Mr. Call: Your country there at Santa Paula is a little more moist than most citrus belts, is it not?

Mr. Teague: Yes, sir.

Mr. Call: You do not irrigate as often, a little over half as often?

495 Mr. Teague: No, we run from six to seven weeks between irrigations usually, and I understand you have to irrigate there every thirty days.

Mr. Call: And your olive and walnut trees go without irrigation?

Mr. Teague: It has been the practice in a full bearing walnut grove to give it some water during the winter months; none during the summer as a rule.

Mr. Call: Do you know your total cost per acre including picking, packing and taking care of your grove and everything excluding interest for the last two years?

Mr. Teague: Yes, sir.

Mr. Call: Will you give it, your average cost per acre for the last two years?

Commissioner Prouty: You have given everything except picking and packing. If you have that you may give it separate.

Mr. Teague: The cost of picking per acre was $96.06; the packing house cost was $229.15 per acre. The average cost of marketing was $21.39 per acre.

Mr. Call: Although you say you can command a little better price than the foreigner, box for box, you do not go up

496 against that foreign competition very often during the course of a year, do you?

Mr. Teague: We do not when we can avoid it. We sell our lemons in the markets the farthest away from the seaboard that we can, and most of them.

Mr. Call: You sell them in Seattle whenever you can rather than in New York?

Mr. Teague: Yes, sir; we sell in Seattle whenever we can.

Mr. Call: Most of your crop is marketed in the region west of the Mississippi?

Mr. Teague: Yes, sir; a very large percentage of it.

Mr. Call: And you and Mr. Leffingwell alone command the Alaska markets, that is the export trade for Alaska?

Mr. Teague: I think we are supplying a very large percentage I do not know that I would put it that far. I have never been in Alaska and I do not know; I presume there are some other lemons going there but I think we supply the most of the trade.

Mr. Call: You know that in the Seattle trade papers they quote right along fancy lemons at a certain price and Leffingwell and Limonera at one dollar more for export?

Mr. Teague: Yes, sir.

Mr. Call: And you get that dollar, don't you?

497 Mr. Teague: I don't know whether we do or not. I presume the most of it. I don't know what the other fellows

got exactly; I am not in a position to say. I do not keep the other fellows' books.

Mr. Call: And you have got your customers in these choice markets, the Denver, Spokane, Seattle, Portland markets and the country west of the Mississippi River; you have got an established trade and customers for a long period of years, have you not?

Mr. Teague: Yes, sir; it has always been our policy to take care of customers when we once started, at all seasons of the year.

Commissioner Prouty: Our time here is limited and I hardly think we ought to take up any more of it in the cross examination of this witness.

Mr. J. H. Call: Your trees are planted double to the acre as compared with other trees in some instances, are they not?

Mr. Teague: No, sir; not double. Our trees are planted twenty-six between the row and fifteen in the row, or one hundred and twelve per acre, and I think the average grove here in California sets about twenty-four feet apart and would produce some—

498 I haven't figured it exactly but I think a little less than eighty trees, would it not?

Mr. J. H. Call: Your grove is situated in the Santa Clara Valley?

Mr. Teague: What is known as the Little Santa Clara.

Mr. J. H. Call: It is sub-irrigated, is it, to a large extent?

Mr. Teague: I don't know that you could say it is sub-irrigated; it is a very deep loamy soil, and retains moisture.

Mr. Norton: I would like to ask, Mr. Teague, whether you prospered during the eleven years preceding the reduction of the lemon rate, was your business profitable?

Mr. Teague: Our corporation was in the formative stage, you might say. We started to set out our groves, as I said, seventeen years ago, and part of them were set two years later and then we had a good many adversities and a large portion of our grove was frozen back, quite a large percentage of it clear to the stump, and therefore we did not have a production which would be considered a profitable one, until about the last five or six years, I should say.

Mr. Norton: Were you among those who waited upon President Ripley, of the Santa Fe, to represent that the lemon traffic would not bear the $1.25 rate?

Mr. Teague: No, sir; I believe not. I attended the confer-

499 ence with Mr. Ripley and at that time another matter was under consideration, a matter I think of refrigeration, which I was not vitally interested in.

(Witness excused.)

J. S. Leeds resumed.

Mr. Matthews: Have you those contracts yet?

Mr. Leeds: Yes, sir; they are in the hands of Mr. Norton or will be in about five minutes.

Mr. Matthews: Will you produce those balance sheets you referred to yesterday?

Mr. Leeds: Before I proceed I want to correct what I believe after I left the witness stand last night was an erroneous impression that I may have made by misunderstanding the question of the attorney. I made a statement that 64 per cent of the refrigeration revenue was consumed in the purchase of ice. That applied if you please to our entire business, not to the citrus fruit.

Commissioner Prouty: I understood you to say that 64 per cent of your entire expense was for ice? Was that right?

Mr. Leeds: No, sir.

Commissioner Prouty: You say it is 64 per cent of all you receive?

500 Mr. Leeds: 64 per cent of all the revenue derived from refrigeration, was paid out for ice. Now I think the attorney wanted to apply that to the $62.50 rate from here to Chicago on citrus fruit, which would be erroneous. Citrus fruit consumes a larger proportion of our higher priced ice and the citrus fruit rate by comparison is lower than our other refrigeration rates, hence a larger portion of the revenue derived from refrigeration would be chargeable to citrus fruit than 64 per cent. I cannot demonstrate that in an exact figure, but the facts are that it uses higher priced ice and that the rate is comparatively lower.

Mr. Matthews: What do you mean by higher priced ice in that connection?

Mr. Leeds: The variation of prices between the different icing stations; in other words the ice at San Bernardino is higher in price than the ice at La Junta, Colorado.

Mr. Matthews: You do not claim that citrus fruit takes as much ice as any other commodity, do you?

Mr. Leeds: By comparison, yes.

Mr. Matthews: Does not deciduous fruit take at least 25 per cent more than citrus fruit?

Mr. Leeds: I never figured out the difference.

501 Mr. Matthews: You testified in the Ozark case that it took at least 500 pounds at each station for deciduous fruit more than for citrus fruit.

Mr. Leeds: It may. If I testified to it it is true. I think I prepared for that at that time.

Mr. Matthews: Is there any commodity you carry in your refrigerator cars which takes less ice than citrus fruit?

Mr. Leeds: Yes.

Mr. Matthews: In the haul from California to the East?

Mr. Leeds: Yes.

Mr. Matthews: What commodity?

Mr. Leeds: Vegetables.

Mr. Matthews: What per cent of the rate to Chicago on citrus fruit do you claim represents cost of ice on the citrus fruit traffic? Have you ever figured it out?

Mr. Leeds: I don't know.

Mr. Matthews: You testified yesterday at one time that it took 15 tons of ice to Chicago and at a later time you said 14 tons. Which is correct?

Mr. Leeds: I have obtained some more exact figures than I had yesterday, and while they are not absolutely correct, they indicate 16 tons.

502 Mr. Matthews: 16 tons?

Mr. Leeds: Yes.

Mr. Matthews: You averaged all the ice up at $4.10, did you not?

Mr. Leeds: When?

Mr. Matthews: How did you get at that $4.10?

Mr. Leeds: I did not have any $4.10.

Mr. Norton: $4.14.

Mr. Leeds: I have stated that the cost of our entire consumption of ice on the Santa Fe System's rails for the year 1909 was $4.14.

Mr. Matthews: $4.14?

Mr. Leeds: Yes, sir.

Mr. Matthews: And you think that is approximately correct for the average cost of the ice used in refrigerating citrus fruit or is it higher or lower?

Mr. Leeds: For that period it is probably below.

Mr. Matthews: That is $4.14 is below what it actually cost you for citrus fruit?

Mr. Leeds: I should say in 1909 yes.

Commissioner Lane: What is the highest price per ton which you pay in a normal season?

503 Mr. Leeds: Our icing contracts will show, but I believe now at the present time and for some little time back, I think the ice at Needles is the highest priced ice.

Commissioner Lane: The ice at The Needles?

Mr. Leeds: Yes, sir.

Commissioner Lane: And that is made there?

Mr. Leeds: Yes, sir.

Commissioner Lane: How much does that cost?

Mr. Leeds: I think it is $5.08 and a fraction cents per ton.

Mr. Matthews: You said $3.75 yesterday, I believe.

Mr. Leeds: $3.65 is what I said yesterday, I believe, and I quoted that from memory and I have examined the contract in the meantime.

Commissioner Lane: You pay $4.00 in Los Angeles, do you?

Mr. Leeds: Yes, sir.

Commissioner Lane: You heard the testimony of some witness who said they had a contract for ice at $2.25 per ton in Los Angeles?

Mr. Leeds: Yes, sir.

Commissioner Lane: Why cannot you get your ice as cheap?

Mr. Leeds: Because I imagine the ice that they are buying is the surplus ice that some man packed here that he otherwise

504 would not be able to dispose of. He cannot make his ice for $2.25 a ton in my opinion.

Commissioner Lane: There was another witness who testified he could make it in a small plant for $2.50.

Mr. Leeds: Yes. I don't think he knows.

Mr. Call: The Southern Pacific contract on file here is for $2.50, I believe, or $2.40 at the same place and the same time.

Mr. Matthews: What do you pay at Los Angeles?
Mr. Leeds: $4.00.
Mr. Matthews: What do you pay at San Bernadino?
Mr. Leeds: Our contract price there is $4.00. There is a little transportation expense comes in on that which I think brings it up to $4.22, we having to transport a portion of that ice from Azusa, for which the car line pays.
Mr. Matthews: What do you pay, the regular freight rate to the Santa Fe for that ice?
Mr. Leeds: No we pay the company material rate.
Mr. Matthews: That is 5 mills you said yesterday?
Mr. Leeds: I think it is 5 mills; I am not sure. It varies on different portions of the system.
Mr. Matthews: Do you aim to make any profit on refrigeration charges?
505 Mr. Leeds: Why, it is a part of the policy declared by President Ripley that we should not make any profit on refrigeration over and above a sufficient amount to maintain the organization and bear our expenses.
Mr. Matthews: Are you following out that policy?
Mr. Leeds: We are trying to do it.
Mr. Matthews: You are figuring on fifteen tons to Chicago, does that fifteen tons include the icing at Chicago, or just up to Kansas City?
Mr. Leeds: It includes the icing at the terminal.
Mr. Matthews: At Chicago?
Mr. Leeds: Yes, sir.
Mr. Matthews: How much is that?
Mr. Leeds: Well it is whatever will fill the bunkers of the car when it arrives there, if we put it in.
Mr. Matthews: Who does that icing?
Mr. Norton: Just a moment: Mr. Call is asking for those contracts. Have they come here?
Mr. Leeds: Mr. Colton has those and will pass them over in a few minutes.
Mr. Matthews: Eliminating that icing, what is your estimate for the ice between San Bernardino to and including Argentine?
506 Commissioner Prouty: Do you ice the car which is to be delivered at Chicago?
Mr. Leeds: Ordinarily we put enough ice in there to insure the holding of that car for a period of forty-eight hours after its arrival.
Commissioner Prouty: So if the car is billed to Chicago and is to be delivered in Chicago you would see there was ice enough in the bunkers to keep the car cool forty-eight hours?
Mr. Leeds: Yes, sir; and ordinarily I think they fill those cars, because the delivery track is pretty well down town and the outer yard is at Crowet, *627* miles away, and they do not like to switch back to that yard within twenty-four hours.
Commissioner Prouty: And your estimate of 16 tons includes this terminal icing at Chicago?
Mr. Leeds: Yes, sir.

Mr. Matthews: You make an extra charge for that where you do ice at Chicago, do you not?

Mr. Leeds: Not for the placing of the car on the team track, no.

Mr. Matthews: You make an extra charge for the ice, though, do you not?

507 Mr. Leeds: No.

Mr. Matthews: Our information is——

Mr. Leeds: I have not included in my 16 tons any ice for which the shipper pays.

Mr. Matthews: Well do you claim that when a car is consigned to Chicago that you ice at Chicago?

Mr. Leeds: We place that car with sufficient ice in it to make its delivery within forty-eight hours, and then if any ice is furnished it is charged to the shipper, yes.

Mr. Matthews: But do you re-ice at Chicago, under the $62.50 rate?

Mr. Leeds: We put ice enough in the car to deliver it, yes, sir.

Mr. Matthews: At Chicago?

Mr. Leeds: Yes, sir.

Mr. Matthews: That is not our information.

Mr. Leeds: Well your information is incorrect.

Mr. Matthews: Eliminating the Chicago icing, what is your estimate of the number of tons required to ice a car of citrus fruit from California to Chicago?

Mr. Leeds: I have given you that as nearly as I can.

Mr. Matthews: That includes icing at Chicago though.

508 Mr. Leeds: It includes what we ice up to Chicago, yes. Now if that car arrives there and is ordered on a team track it is placed on a team track at once.

Mr. Matthews: Figuring your rate of $4.14, which you say is low for citrus fruit, on the basis of 16 tons that would make sixty-seven or sixty-eight dollars?

Mr. Leeds: That is right.

Mr. Matthews: You say it costs you sixty-seven or sixty-eight dollars to ice a car of citrus fruit?

Mr. Leeds: If at that price, yes, sir. We frequently ice cars of citrus fruit that we do not get the price of the ice out of.

Mr. Matthews: So you are losing money on your average business of the shipment of citrus fruit?

Mr. Leeds: No, sir; we are not.

Mr. Matthews: On those figures you are.

Mr. Leeds: Yes. Now I can give you the average if you please for a term of years.

Mr. Matthews: I would like to have it.

Mr. Leeds: It will show a little bit differently, but not materially so. Here are the balance sheets you asked for yesterday (handing papers).

509 Mr. Matthews: I will examine them later. We will not take time now.

Mr. Leeds: For a period of three years, 1907, 1908, 1909, our average cost of ice on the Santa Fe rails was $3.81 per ton.

Mr. Norton: What year?

Mr. Leeds: For the years 1906-7, 1907-8, 1908-9; in other words the seasons of 1907, 1908 and 1909.

Commissioner Prouty: That was the cost of the ice in the bunkers?

Mr. Leeds: Yes, sir.

Commissioner Prouty: Under your contract with the Santa Fe?

Mr. Leeds: Yes, sir.

Mr. Norton: What was the average please?

Mr. Leeds: $3.81 per ton.

Mr. Matthews: That is for the entire system for all business, is it not?

Mr. Leeds: Yes, sir.

Mr. Matthews: Have you that separated as to years?

Mr. Leeds: Yes, sir.

Mr. Matthews: For those three years?

Mr. Leeds: For 1907 it was $3.55, 1908, $3.57 and 1909,
510 $4.14. You will observe that there is a heavy advance between 1908 and 1909 amounting to 57 cents a ton.

Mr. Matthews: Going back to Chicago for a moment, can you estimate the average amount of ice you put in the cars when they arrive there?

Mr. Leeds: No, I think that varies a good deal. Of course it varies with the season and to some extent with the car.

Mr. Matthews: If the bunker contains a certain amount of ice you do not put any ice in. What is that amount? If it is half full do you put in any?

Mr. Leeds: Yes, we put some more ice in it if it is half full and I am under the impression that when we put the car to the icehouse at all they usually fill it because we do not like—in fact it is cheaper to put the ice in than it would be to switch it back again and charge the shipper for the little bit of ice we put in.

Mr. Matthews: What do you pay for the ice at Chicago?

Mr. Leeds: I have not got that, but I will give it to you in the course of my testimony. I will not undertake to say, but we pack our own ice there and that is covered by a circular of the purchasing department as to the price of it delivered in the bunkers of the car.

511 Mr. Matthews: You ship in ice at certain seasons of the year?

Mr. Leeds: Yes, sir.

Mr. Matthews: Will you tell me approximately what seasons it is necessary to make the shipments, is it early or late in the season?

Mr. Leeds: I don't know as I gather what you mean.

Mr. Matthews: Did you ship any ice into any stations during 1909?

Mr. Leeds: Yes.

Mr. Matthews: What stations?

Mr. Leeds: We had to ship ice a good many places in 1909. I can give you some notable cases of that.

Mr. Matthews: Give me some, please.

Mr. Leeds: In fact I don't know, but it would be a good idea to give you somewhat the history of that, because it was maybe a little bit unusual. We discovered in the month of March, very early in the month of March or February, that we were not going to have a crop of ice at the Las Vegas Hot Springs Canyon, from which source we depended on ice at Belen or Las Vegas, as the case might be, and La Junta; and we were obliged to go out and buy, and they were still cutting ice at Lake George in Colorado and we bought
25,000 tons at Lake George, back of Colorado Springs, which
512 was delivered to us at Colorado Springs, and part of it was
95 cents and part of it was $1.15 a ton. There were no storage facilities at Lake George so we had to take that and provide for it ourselves, and the only available storage was at the Las Vegas Hot Springs Canyon, where our crop had failed.

Mr. Call: That was the same story you told us six years ago.

Mr. Leeds: Well maybe it was but we have to tell it now and this was in 1909 however. So we had to place that ice in the storehouse at Las Vegas Canyon to draw upon as we needed it. We supplied about between two and three thousand tons of that at Winslow, where we were called upon to supply more ice than our plant at that point could make. And that ice cost us delivered in the bunkers of the cars between transportation and so forth about $12.00 a ton. We had to supply all of the ice which we used at Belen from that source last year. We bought considerable quantities of ice which came down from Truckee, I think, and some of which was delivered at The Needles. And altogether by reason of the increased amount of business moved under refrigeration in 1909 we supplied for the entire system in excess of the year before about
80,000 tons. A pretty large portion of that of course was
513 used at La Junta where we shipped some of this citrus fruit and also at Belen and at Winslow, as I have before stated, and that accounts for the increase in cost of our ice in 1904 to some extent, and perhaps in fact entirely.

Mr. Matthews: Will you tell us what months that ice was used in?

Mr. Leeds: That was used in all the months that you refrigerate. A portion of it is used in all the months you refrigerate citrus fruit.

Mr. Matthews: What months?

Mr. Leeds: Ordinarily it would begin in March and extend through the summer until the end of the year, until the cold weather comes on or cool weather comes on.

Mr. Matthews: You began using that ice in March you say?

Mr. Leeds: Late in March I think we began using it. We filled the Belen house very early and some of it is used right away.

Mr. Matthews: Do your records show how much of it was used at each station, of that ice which was shipped in?

Mr. Leeds: My records will show, I haven't them here—they will show what was used at every station and where it came from, but I can only tell that in Chicago where our records are kept.

Mr. Matthews: And you could trace through those records
514 the amount of that ice used in the refrigeration of citrus fruits, could you not, if necessary?

Mr. Leeds: No, I do not think so. There is one thing that characterizes this business that perhaps would be beneficial to know. The crops vary pretty largely in volume, and also there is a wide fluctuation between the quantity of each crop which moves under refrigeration. Those things we cannot foresee, and I do not think—at least if they can be foretold they are not—we were informed that the crop of 1909 would be very little in excess of the crop of 1908 and we supplied 36 per cent more cars than we did the year before. We refrigerated 69 per cent more cars under ice, I am speaking now of citrus fruits,——

Mr. Matthews: Your counsel can bring that out if he wants to. I want to ask some questions.

Mr. Norton: You are welcome to it.

Mr. Matthews: We will never get through if the witness keeps wandering.

Mr. Leeds: Well, I am wandering along in the proper direction.

Commissioner Prouty: This all has to be told some time and he might as well tell it one time as another. You may proceed.

Mr. Leeds: Well I will give you I guess—in the years 1905 and 1906 the Santa Fe system moved 12,700 cars of citrus fruits,
515 in the season of 1906 and 45 per cent of that was under refrigeration. In 1907 they moved 14,619 cars and 59 per cent of it was under ice, an increase in the crop of 1,900 cars; and under refrigeration of 2,486. In 1907-8, 18,869 cars, 40 per cent of which was under refrigeration, a decrease if you please of about 19 per cent and increase in the crop however of 4,250 cars and a decrease in refrigeration of 2,038. In 1908-9 they handled 21,537 cars of which 49½ per cent were under refrigeration, an increase in the crop of 5,668 cars and under refrigeration of 4,351 cars, an increase under refrigeration of 59 per cent. That would indicate the fluctuations in the crop and also the variations in the quantity under refrigeration or to be moved under ice.

Commissioner Prouty: Is that all you desire to say about that?

Mr. Leeds: Yes, sir.

Mr. Matthews: When a P. F. E. car moves over your rails what arrangement do you make for the supply of ice and what do you charge for it?

Mr. Leeds: We ice their cars as we do any other refrigerator cars moving under ice over the rails of the Santa Fe road and we make a bill against them if it is traveling under a state of refrigeration for the cost of the ice.

516 Mr. Matthews: For the actual cost of the ice?

Mr. Leeds: On some portions of the system we charge them the cost of the ice plus 65 cents.

Mr. Matthews: Per ton or per car?

Mr. Leeds: Per ton.

Mr. Matthews: What are your arrangements with the eastern roads? You pay $2.50 a ton, do you not?

Mr. Leeds: We pay $2.50 and over; at some points we pay more.

Mr. Matthews: Do they bill aginst you for that?

Mr. Leeds: Yes, sir.

Mr. Matthews: Do you supply the Pullman Company with ice at the icing stations along the road?

Mr. Leeds: No.

Mr. Matthews: Or does the Santa Fe Road?

Mr. Leeds: The Santa Fe Road, I think, supplies them with their ice.

Mr. Matthews: You do not know what they charge?

Mr. Leeds: I don't know anything about it.

Mr. Matthews: Who will know that?

Mr. Leeds: I presume the purchasing agent's office.

Mr. Matthews: During 1909 you changed the icing station, did you not, omitting Las Vegas and La Junta?

517 Mr. Leeds: No, Las Vegas and La Junta still remain icing stations on business that moves that way, but the routing of the business so far as the eastern markets are concerned was changed.

Mr. Matthews: That is the citrus fruit moves another way?

Mr. Leeds: Yes, sir.

Mr. Matthews: What additional icing stations does that bring in?

Mr. Leeds: That brings in Belen, Clovis and Winona.

Mr. Matthews: Did you ice at all three stations?

Mr. Leeds: In the early part of the season I think we ran through Winona and made the run from Clovis to Argentine without re-icing.

Mr. Matthews: What does ice cost you at each of those places?

Mr. Leeds: That will be shown in the contract which you will be supplied with, but I can give you from memory two of those points. At Clovis the rate is $3.50 and Winona $3.00 per ton.

Mr. Matthews: And at Belen?

Mr. Leeds: At Belen, I cannot give you it, because it varies during the season according to the point which the ice came from. There is no ice machine there.

Mr. Matthews: Will you tell me how you got this 16 tons

518 to Chicago, is that an estimate or arrived at from actual tests on the cars?

Mr. Leeds: I secured this morning from the auditor's office here some few cars, the icing record of a few cars, and they indicated something in excess of 16 tons.

Mr. Matthews: What months were those cars moved in?

Mr. Leeds: April I think and May, June and July.

Mr. Matthews: May, June and July?

Mr. Leeds: April, May, June and July. Now my impression is we would reduce that a little perhaps if we took a longer period and made a careful statement of it.

Mr. Matthews: You do not believe that is a fair average for the whole year?

Mr. Leeds: Well maybe it is. It is as fair an average as I could secure this morning.

Mr. Matthews: Without an actual investigation?

Mr. Leeds: I would prefer to make a careful estimate or statement of it.

Mr. Matthews: All right. That is what we want.

Mr. Leeds: I do not think it will vary a great deal from what I have given you.

Mr. Matthews: Yesterday we went over the icing stations during 1908. As a matter of fact you do not ordinarily ice at La Junta when the icing is done at Las Vegas?

Mr. Leeds: In the early part of the season we have been in the habit of doing at La Junta what I have just stated what we did at Winona.

Mr. Matthews: By the way how many round trips will a refrigerator car make from the East to California, ordinarily?

Mr. Leeds: That is an indefinite quantity and is not regular as to all of the equipment; that is, one car might make even two or three more trips than another, depending on the handling of the equipment.

Mr. Matthews: What is your best estimate, would it make as many as six trips?

Mr. Leeds: The best estimate would be to take your equipment devoted to that service and taking the number of cars you handle.

Commissioner Prouty: About how many days does it take a car to get back to California?

Mr. Leeds: That would have to be answered very much in the same way; but I think we load more of our equipment westbound and it does not move back as rapidly as it would if it moved empty.

Commissioner Prouty: What per cent of your equipment do you load westbound?

Mr. Leeds: I think that can be answered definitely by Mr. Peabody, but as a guess I should say 70 per cent.

Commissioner Prouty: 70 per cent.

Mr. Leeds: I think so.

Mr. Matthews: Will you tell us what crops you move in these refrigerator cars? You move citrus and deciduous fruit as you have already said. When does the movement of deciduous fruit begin?

Mr. Leeds: I think a little of it moves in May and June and then it continues throughout the season until frost and then elsewhere on the line there is some business moved from Colorado, that does not begin as early however as the California deciduous fruit.

Mr. Matthews: You use a great deal more ice per car in August and July than you do in the early months of the year, do you not?

Mr. Leeds: Yes, sir. I can give you about what would be a fair average. I made up a statement a while ago for another purpose, and taking the average icing all over as far as our cars travel in the months of March and April it was about 1700 pounds from one point to another; in May it was 1920 pounds; June 2140 pounds; July 2114 pounds; August 2693 pounds.

Mr. Matthews: What are those figures, pounds?

Mr. Leeds: Those are the pounds of ice as an average from station to station.

Commissioner Prouty: After the car has been initially iced?

Mr. Leeds: Yes.

Commissioner Prouty: Have you any figures to show what it takes for the initial icing of the car?

Mr. Leeds: The initial icing of our car nominally is 9000 pounds, almost universally; we have some 8500 cars and a very few 8000 pound cars, but the predominating car that we use holds 9000 pounds. We are now building 1000 new cars that will take 10,000 pounds.

Commissioner Prouty: When you ice a car of oranges from California East do you ice the car before it is loaded?

Mr. Leeds: No, not unless it is so ordered.

Mr. Matthews: And then there is an extra charge?

Mr. Leeds: Well depending whether it is within the switching limits of the place from which it is loaded.

Commissioner Prouty: Suppose that the car is loaded at some one of these stations at this side of the assembling point;
522 what is your assembling point?

Mr. Leeds: San Bernardino.

Commissioner Prouty: Suppose the car is loaded this side of San Bernardino, you ice the car where it is loaded, do you?

Mr. Leeds: No, those cars are all assembled with a pick-up train.

Commissioner Prouty: They are iced for the first time at San Bernardino?

Mr. Leeds: Yes, sir.

Commissioner Prouty: And you put in the 9000 pounds of ice there?

Mr. Leeds: The capacity of the bunkers of the car, yes, sir.

Commissioner Prouty: Where are they iced the next time, at Needles?

Mr. Leeds: At Needles, yes.

Mr. Matthews: Your company pays five per cent per annum to the Santa Fe road for the use of the cars, does it not?

Mr. Leeds: Yes.

Mr. Matthews: What is that five per cent, on the value or on the cost?

Mr. Leeds: At the present time the five per cent is assessed on the investment as it is—in fact, as long as the investment remains in the equipment.

Mr. Matthews: We have not had a chance to examine
523 these balance sheets, and do not want to take the time now to do it, but do these balance sheets show all the items of expense which you have charged on your books against this service?

Mr. Leeds: Yes, sir. I believe they do.

Mr. Matthews: Generally, can you name a single item outside of the cost of the ice for a single service which you would not have to perform if there was no refrigeration done? In other words, supposing everything moved under ventilation?

Mr. Leeds: To begin with, we would not supply a refrigerator car.

Mr. Matthews: Well, somebody would furnish them.

Mr. Leeds: No, no, the refrigerator car would be unnecessary. We would supply in that case an insulated car.

Mr. Matthews: Are not these cars necessary for the ventilated service?

Mr. Leeds: Not so far as the refrigerating device is concerned, no.

Mr. Matthews: You could not carry the fruit in a box car?

Mr. Leeds: Why, it used to be done that way; but I think that has gone out of use; it has with us.

Mr. Matthews: I will ask you a question or two on this pre-cooling charge. The Santa Fe Despatch Company publishes an
524 icing tariff, does it not?

Mr. Leeds: The refrigeration tariff is published by the Atchison road; yes, sir.

Mr. Matthews: Well, it is labeled Santa Fe Refrigerator Despatch Company No. 8121-C at the present time.

Mr. Leeds: No, that is headed—I think I have a copy of that here and will make that exact.

Mr. Matthews: Well, we have a copy. What is that $30 for? What service does the Despatch Company perform for that $30?

Mr. Leeds: We furnish this car, and it is an expensive car, and more so than would be necessary for the handling of fruit under ventilation.

Commissioner Prouty: It is the same car you do furnish for handling fruit under ventilation.

Mr. Leeds: I understand, but we cannot afford to supply double equipment to handle this business. You understand that the ventilated portion of it moves out at a certain season and the refrigerated part of it at another season, so we have either got to supply this refrigerator car for ventilated service, or supply double equipment, and the company elects, for reasons of economy, I suppose, to furnish the refrigerator car for ventilated stuff, and take the
525 disadvantage, if you please, of handling that kind of a car for that class of business, when in fact it is unnecessary, so far as the business itself is concerned.

Commissioner Prouty: So it is your claim that the refrigerated stuff should pay something on account of the fact that you use for the ventilated shipment a more expensive car than would otherwise be necessary?

Mr. Leeds: I did not say that, and I do not want to say it; but I do say that primarily this car is a refrigerator car and it is prepared and constructed for the purpose of handling refrigerated business. Now, then, having been so prepared, the refrigerated business, of course, should bear the burden. It falls upon that part of the business on account of the use of a refrigerator car. Now, if we happen to want to use that or do use it for reasons of economy or otherwise, a refrigerator car to handle ventilated stuff, that should not be counted, so far as refrigerator business is concerned, to the benefit of the shipper. It is our disability.

Mr. Matthews: So you claim that $30 for the use of the car?

Mr. Leeds: Yes, just as a man pays rent for a house; the landlord does not do anything but furnish the house——

Mr. Matthews: What do you get when the car is used
526 for ventilation? What revenue do you get?

Mr. Leeds: We get the mileage paid by the railroad company when it is under ventilation.

Mr. Matthews: Well, you get that in this case, too, do you not?

Mr. Leeds: Yes, sir.

Mr. Matthews: What is the difference here? Why should you make a charge for the use of the car when the shipment is pre-cooled and pre-iced, and not make any charge when it is merely ventilated?

Mr. Leeds: Why should we furnish the car?

Mr. Matthews: Well, you are running the railroad. Answer the question, why should you make a charge in the one case and not in the other for the use of the car?

Mr. Leeds: Because I am furnishing a car upon which I am supposed to get a revenue for refrigeration, and it is primarily a refrigerator car. Now, then, I am using this for the purpose for which it is supplied and charging a revenue for the use of it for that purpose.

Mr. Matthews: I thought you were not making any revenue upon refrigeration, according to your figures, 16 tons to Chicago at $4.

Mr. Leeds: I am not doing it and boarding myself and
527 furnishing the ice.

Mr. Matthews: So you do not justify that charge as freight on ice or inspection or anything of that kind?

Mr. Leeds: So far as that is concerned, I am willing to say, if you please, that the $30 rate was put in over my protest. I did not want to put it in and do not believe in it yet.

Commissioner Prouty: What do you believe in, the full refrigeration charge?

Mr. Leeds: I believe in the carrier doing what the law states he shall do, furnish the refrigeration. I am willing to do that, if you please, at a reasonable price. I do not care anything about what the price is, but what these people are evidently endeavoring to do here is to tear down something that they cannot rebuild. Now, I am as proud of the service that I perform in the handling of this perishable freight business as Mr. Chase is of his orange orchards over at Redlands, and I do not want interference if it is going to destroy the service. I want them to stay on their side of the fence and I will stay on mine, and I will work for them as cheaply as they could do it for themselves.

Commissioner Prouty: Their claim is that you cannot
528 perform this service.

Mr. Leeds: Yes, but I can.

Commissioner Prouty: But they say the service must be performed at the packing house, and the testimony which was introduced here tends to show that.

Mr. Leeds: They say a lot of other things——

Commissioner Prouty: They give some reasons for that thing.

Mr. Leeds: For instance, they say they can afford to do this for five cents a box.

Commissioner Prouty: Well, they say they have a contract in Los Angeles.

Mr. Leeds: I understand they say they can do it for five cents a box. I can do it for five cents a box, if you give me plenty to do and a central point at which to do it, but I cannot establish a pre-cooling and pre-icing establishment at every cross-road in southern California and handle a handful of business and do that. The overhead charge in one of these plants would require the handling of 150,000 boxes of fruit at five cents a box before they would have their overhead charge paid without any reference to the operation of it.

Mr. Norton: Mr. Leeds, to help Commissioner Prouty get at your views, you are not objecting to the shippers pre-cooling
520 oranges before delivering them to the carriers?

Mr. Leeds: By no means.

Mr. Norton: Your objection is to their icing our cars?

Mr. Leeds: My objection is to their dividing the refrigeration service with me after the stuff is in the car. I want them to—this will only result in demoralization, and no good.

Commissioner Prouty: You said you were not in favor of the pre-cooling charge of $30. What are you in favor of? Are you in favor of allowing the shipper to pre-cool his fruit?

Mr. Leeds: By all means, yes, as much as he wants to.

Commissioner Prouty: Well, he pre-cooled his fruit and puts it into a car; do you think, then, it ought to be the duty of the railroad company to fill up those bunkers and seal them?

Mr. Leeds: We should do the refrigeration. I do not want to divide responsibility with a party at a point or at a line where I cannot locate him.

Commissioner Prouty: But the refrigeration in case of the pre-cooling system is the pre-cooling; that is all there is to it, after the stuff is pre-cooled——

530 Mr. Leeds: Assuming that is true, and maybe it is not.

Commissioner Prouty: They say it is, and they are willing to take the chances on that. All they ask of you is to take this car, to pre-cool their fruit, to pack the fruit in the car and fill those bunkers with ice and seal those bunkers up and to transport that car to its destination. If the fruit injures, that is their business.

Mr. Leeds: Now, that is my car, is it not?

Commissioner Prouty: You lease it to them for the time being?

Mr. Leeds: No, I do not.

Commissioner Prouty: Yes, it is your car.

Mr. Leeds: No, I do not. I am leasing that car to them to transport some freight.

Commissioner Prouty: It is the railroad company's car, but the railroad company is obliged to take that freight and transport it to destination.

Mr. Leeds: Yes, and subject also under the same rule and liability as apples to refrigeration, when required to do so by one shipper or any shipper, by or with any shipper.

Commissioner Prouty: Now, up in my own country we ship po-

tatoes in the winter; the railroad company furnishes a car
531 which is sometimes a refrigerator car and sometimes a specially constructed car; and it requires the shipper to put in the heating apparatus to keep that car warm. Your function is to keep the car cool. Why should you not suffer these shippers to put their ice into your bunkers if they are sealed up and you are required to do nothing more save transport it to destination?

Mr. Leeds: Because we use this car for a purpose for which it was constructed, for the purpose of refrigeration, for the transportation of perishable freight, and out of which the owner of the car, whether he be a railroad or somebody else, intends when he builds that car that he is going to make some profit or get paid at least for the use of that car for that purpose. Now, there is no expense attached, if you please, and there is no necessary special construction required in the preparation of a car for the loading of potatoes other than an insulated car. Now, any insulated car will carry a car of potatoes.

Commissioner Prouty: What difference does it make whether you provide an insulated car which is a special car, or whether you provide another car with a bunker in the end, which is also specially constructed?

532 Mr. Leeds: We do not have to handle potatoes in those cars.

Commissioner Prouty: I understand you do not have to ship potatoes in them, but you do have to handle oranges in them. If the proper way to handle oranges is to pre-cool them, and load them and fill up the bunkers and send it to destination, why should you not provide a car which is suitable for that purpose and allow it to be used in that way?

Mr. Leeds: I will tell you the reason why. From the beginning of the shipment of citrus fruit in refrigerator cars the whole transaction has contemplated the handling of that commodity in a hired car, whether it belongs to the railroad or to somebody else. The whole construction of the tariff has always carried that feature. There always has been a refrigerator rate attached to the handling of oranges under refrigeration. The tariffs of the railroads have been built on that basis. We have built up our service on that basis, and it is the best there is in the world today, and it is the cheapest there is in the world today. Our refrigeration rate from here to Chicago is 1.73 mills per ton per mile, and there is not a parallel to it in the United States.

Commissioner Prouty: Oh, yes, they refrigerate cheaper
533 than that up on the Northern Pacific.

Mr. Leeds: They don't need any ice there.

Commissioner Prouty: But there are two questions here, Mr. Leeds. The first question is whether the shipper shall have a right to use your cars in that way for a reasonable sum. Now, you say you are not in favor of allowing him to do it, and I am trying to find out why you are not.

Mr. Leeds: My reason for that is this. I have got a lot of trained men along the road from here to Chicago to handle this business, and I have got to maintain them in order that this service shall be

what we want it to be. Now, if we are going to have this service demoralized and scattered to the four winds of the earth, there is going to be more or less irregularity in the manner in which the business is handled. We are organized to do it in the way that it is running today, and while I am willing to work cheap and willing to work without profit other than sufficient to maintain the car line, that is a part of Mr. Ripley's creed, I believe, I do not want to have some body dipping in here and there and yonder and somewhere else to disturb the manner—in fact, to disturb the organization of my men.

Commissioner Prouty: I understood you rightly then; you
534 are not in favor of allowing the shipper to pre-cool and pre-ice his own cars?

Mr. Leeds: I am not.

Commissioner Prouty: Because it will disorganize your service?

Mr. Leeds: And my service is of some value.

Commissioner Prouty: But they say the other service is better.

Mr. Leeds: I can do the same thing they do and do it cheaper than they can, and well.

Mr. J. H. Call: If you will, we will drop the whole business. If you will do it cheaper than we can and as well, that ends the debate.

Mr. Leeds: Well, I think I can do it better.

Commissioner Prouty: The proposition of these shippers is that you cannot do it because the fruit has to be iced at the packing house. They say when the fruit comes into the packing house it should be put into a box and that box put into the cooling room immediately, and that is the service which you cannot render.

Mr. Leeds: Well, now, I am rather inclined to take issue on that particular point, and I have got pretty good reasons for it,
535 and I will tell you what they are.

Mr. Norton: And Mr. Chase agrees with Mr. Leeds on that.

Mr. Leeds: They are these:

If we ice a car loaded with warm fruit and keep it well iced, we calculate that it has reached a proper stage of refrigeration, as low as the ice will maintain, probably about the time that it reaches Winslow. It may in seasons go to somewhat east of there. Will you state that question once more to me?

Commissioner Prouty: The shippers say you cannot perform the service because it has got to be performed at the packing house; that it cannot be performed at some exterior point.

Mr. Leeds: Oh. Now, they testify that it takes from 24 to 48 hours to refrigerate that box of oranges in their houses. Now it takes nearly as long to refrigerate that box of oranges in their house as it does in a car refrigerated. Now, I am not ready to admit that there is any damage occurs in either case. I doubt it. I think that fruit properly handled will refrigerate properly in a car in the old fashioned way, and go all right. I think it will refrigerate in their houses and come out all right. Now, then, if we load a car of hot

fruit and take it to a pre-cooling plant at San Bernardino,
536 and we can put that fruit down as low as the ice will maintain within four hours, we have got that fruit refrigerated before the man has that puts it in his packing house. And furthermore, going back to my proposition of a while ago, on the 13th day of February, 1909, there was a meeting held at Los Angeles at which President Ripley was present. It was held for the purpose of determining what the shippers in this territory wanted. It was also held for the purpose of determining whether they were going to build a pre-cooling plant or not, and it was pretty liberally attended. And the consensus of opinion there expressed by a majority of the people was that they wanted the railroad to do the pre-cooling because of the expense of the establishment of the cross-roads small plant at the outside point. And on the strength of that meeting Mr. Ripley authorized us to go ahead with the construction of the plant. We built one there that I think is the finest plant of its kind in the world. It cost half a million dollars, and was built for the purpose of doing the things that they there expressed themselves as wanting us to perform.

Commissioner Prouty: How much do you charge for it?

Mr. Leeds: Charge them for that?

Commissioner Prouty: Yes, per car.

537 Mr. Leeds: That depends on how much it is going to cost us, but they will get it at cost, so far as the pre-cooling is concerned.

Mr. J. H. Call: What is the published tariff on that?

Mr. Leeds: The tariff now would be the refrigeration rate, including the pre-cooling. Now——

Commissioner Prouty: You charge them now $62.50 for refrigeration to Chicago?

Mr. Leeds: Yes, sir.

Commissioner Prouty: They testify that they themselves can cool the oranges for five cents a box. About how many boxes do you average to send in a car before it is pre-cooled?

Mr. Leeds: 384 boxes is the minimum.

Commissioner Prouty: Say it is 400 boxes, that would be $20 for the pre-cooling, and the ice would cost about $12.50 more; that would be $32.50. They say they can send that car for $32.50 to Chocago, New York or Boston. Now, you charge them $62.50 to Chicago and $75 to New York and something more to Boston. If they can make that saving they ought to be entitled to it, ought they not?

Mr. Leeds: If they can do it, we can.

Commissioner Prouty: But what you can do is one thing,
538 and what you might be willing to do is another thing.

Mr. Leeds: I am not willing to do this, I am not willing to take and maintain an organization—we do a lot of things for these people that cost us some money; we have got to maintain an organization to do it.

Mr. J. H. Call: Did you say for these people, or to these people?

Mr. Norton: I think the existence of the $1 rate answers Mr. Call's remark, and the reduction of the rate from $1.25 to $1.15, without the action of the Commission.

Commissioner Prouty: Is it your position, Mr. Norton, and yours, Mr. Durbrow, that these shippers ought not to be allowed to pre-cool their shipments and pre-ice the car?

Mr. Durbrow: If your Honor please, my position, and I have expressed my opinion to the tariff officials of the Southern Pacific Company, and from the turn that this investigation has taken, I am sorry they did not follow my suggestions, that because the amended Act makes it the primary duty of a railroad company to furnish refrigerator service, that we are entitled to furnish that service, and that we can decline to permit the shipper to perform that service, just as we can prevent a man from
539 going into our dining car and taking his lunch and using the stove to cook his food and boil his coffee; or, as we can decline to permit a shipper to buy or hire a locomotive and put it on our track and run it. Our position is that when the railroads undertake to transport this perishable commodity, and they have to provide themselves with equipment for refrigeration and pre-cooling plants, and can accommodate all the traffic that is offered, that we can decline to permit the shippers to perform that service themselves.

Commissioner Prouty: What do you propose to do? You have at the present time filed a tariff, and we are required to pass upon the reasonableness of that tariff. Do you intend to maintain that tariff in effect?

Mr. Durbrow: That is for the traffic officials to determine. We are merely advised as to questions of law. I will say, so far as the Southern Pacific Company and the Pacific Fruit Express, for which it acting in performing this service, are concerned, that no additional charge will be made for pre-cooling the shipments. It is considered by the experts employed by the Southern Pacific Company and the Pacific Fruit Express that the refrigeration and pre-
540 cooling are one and the same thing. It is to bring the fruit to refrigeration, and the sooner the fruit is brought to refrigeration, under the very testimony of the witnesses for the complainants, the better; and therefore, if we can bring this fruit by pre-cooling it to refrigeration within three hours, which we are doing today, and which our evidence will show we are doing satisfactorily, and icing that shipment through to destination, we are entitled to make a reasonable charge for that particular service, and this $30 charge put into the tariff was a charge put in to accommodate a certain number of these independent shippers.

Commissioner Prouty: Now, these shippers testify and apparently show that they can perform the refrigeration service for from $30 to $35 at the outside, reaching all points. You say it is your privilege to perform the refrigeration service, but Mr. Leeds admits it ought to be performed in the cheapest way.

Mr. Durbrow: Exactly.

Commissioner Prouty: Therefore it would be our duty, in view of

this new invention, to reduce your refrigeration to $30 or $35 to all points, would it not?

Mr. Durbrow: No, and I will tell you. If we show, as the
541 evidence will show to your Honors, that this pre-cooling taken in connection with the refrigeration, merely brings the fruit to refrigeration at an earlier point of time, thereby enabling the fruit to reach the market in better condition, and that it costs the Southern Pacific and the Pacific Fruit Express to pre-cool and refrigerate and bring it to destination the same as if it was put under refrigeration, our rate should not be cut, but if anything, should be increased, for the reason that we are giving better service. If the Southern Pacific or the Pacific Fruit Express, as the case may be, is pre-cooling these shipments and refrigerating them and taking the shipments through to destination, and we show your Honors what it actually costs us to perform that service, and we show you that practically we are not making any large profit out of it, if any at all, then I say these shippers cannot come in and complain that we are not according them a reasonable rate. The evidence given here yesterday, so far as these gentlemen are concerned, to the effect that the shipments must be pre-cooled at the packing house, has only one effect, and that is that the shipments must be brought to refrigeration at the very earliest possible time. The evidence discloses they have some arrangement here for pre-cooling
542 the shipments at Los Angeles, transporting them into Los Angeles and cooling them here. If we bring the fruit to refrigeration at as early a time as they do, it does not make any material difference whether the fruit is transported to the point where the pre-cooling is done, or whether it is done at the packing house itself.

So far as the question of cost is concerned, you have heard some testimony of witnesses here, and when we put in our case, we will be prepared to show you, with I think some quite satisfactory evidence, as to the actual cost of performing the service. And in this connection I would like to ask the complainant to produce the contract that they have entered into here with this ice company for the refrigeration or cold storage of their fruit. I think it is quite material to have that contract, and if the complainants will produce it——

Mr. Call: It is in the form of two letters, and we will produce it.

Commissioner Prouty: You may produce the correspondence.

Commissioner Lane: What is your justification for the $30 rate? Is that rental of the cars?

Mr. Durbrow: My justification for the $30 rate—I am not speaking as a traffic man or expert pre-cooling man, but my idea
543 is this, that when we furnish a car that is so equipped that they may send forward their fruit under refrigeration, that we are obliged in the first instance to see that that car is properly equipped; that the refrigeration device is in proper order; because we are chargeable for damage that may result if our equipment is not in proper condition. We are obliged to inspect that car, and we

are obliged to see that it is kept in proper condition in its entire transit to the eastern points, and we have inspectors employed for that purpose. Not only are we entitled to some compensation for the refrigerating device, but we are entitled to some compensation also for the additional weight we carry represented by this six tons of ice that it is shown they put in the car.

Commissioner Prouty: That is paid to the car company; it is not paid to your company.

Mr. Durbrow: I have thought of that question.

Commissioner Lane: Are not all the items which you have mentioned included in the rate of transportation, and not in the refrigeration?

Mr. Durbrow: No, your Honor.

Commissioner Lane: Why not?

544 Mr. Durbrow: We charge a certain price per hundred pounds for moving the fruit to the eastern destinations, whether it moves under refrigeration or ventilation. If in addition to that sum we make a charge for refrigeration, we take into consideration in fixing the refrigeration charge the additional expense that will be incurred by the railroad companies in transporting the ice across the continent. Now, as Commissioner Prouty suggests, that is paid probably to the car company. I do not know, but be that as it may, the railroad companies are charged with the primary duty of furnishing this refrigeration. If it is furnished through the instrumentality of a car line company, then in the balancing of considerations, between the car line company and the railroad company, the railroad company may say, "Well, when the shipment moves forward under refrigeration, you take the entire refrigeration charge; it costs us some additional amount, but that is no concern of the shipper's, so long as the aggregate charge that is made to the shipper is a reasonable charge for the service." Now, whether the railroad company furnishes this refrigeration service directly or through the instrumentality of a car company under contract in existence today I think is immaterial and outside the question here,

545 so long as the aggregate charge to the shipper is a reasonable charge. And I justify this $30 charge because of the use of the refrigerator device, because of the inspection along the line, and because of the risk that we entail in transporting the shipment to destination, and also because of the additional ice carried by the railroad company. And to my mind it is immaterial whether that charge is made by the railroad company directly or through the car line, or whether the car line or the railroad company receives that, because we are obliged to employ the Pacific Fruit Express Company to perform this duty for us, and in the balancing of considerations, we are entitled to take into consideration the revenue which may be received by the car line company when the shipments move forward under refrigeration.

Another thing we have to take into consideration is the deterioration or depreciation of the car. If your Honors will go out here to the car shops of the Pacific Fruit Express Company, you will find them pulling out insulation, large quantities of this insulation, this

hemp or some kind of flax fibre, which is very expensive. They have to tear out portions of the car; the dampness of the car causes the car to depreciate very rapidly. And they have to wash the
546 floor of the car. And you will find dozens of cars there up on jacks in which they are putting in new floors. So that the actual cost of the car line company, and incidentally to the railroad company, of moving a car forward under refrigeration, is greater than when it moved through under ventilation, where the dry air is going in through the car.

Commissioner Lane: You pay mileage for the use of that car, and that is the rental of the car?

Mr. Durbrow: That is the rental of the car.

Commissioner Lane: You pay what?

Mr. Durbrow: Three-quarters of a cent a mile to the Pacific Fruit Express Company for the use of their cars, whether moving forward loaded or empty.

Commissioner Lane: You pay the same mileage for a refrigerator car as for a cattle car?

Mr. Durbrow: I am not advised as to that.

Mr. J. H. Call: Is it the same eastbound as westbound?

Mr. Durbrow: Eastbound and westbound the charge is the same, three-quarters of a cent a mile. Our evidence will disclose 75 per cent of the Pacific Fruit Express cars move forward westbound empty and not under load.

Commissioner Lane: The company from whom you rent
547 the cars, to whom you pay three-quarters of a cent a mile, is the company that bears the burden of depreciation and other things?

Mr. Durbrow: Exactly.

Mr. Call: And engaged in outside business.

Commissioner Lane: You are simply renting cars from them, that is all, is it not?

Mr. Durbrow: No, we are not. We are renting cars from them in which we transport these shipments, and in addition to that, through the instrumentality of the Pacific Fruit Express Company, our agents in this matter, we are performing a refrigeration service for these shippers. You will learn, when our evidence is introduced here that a large and a great expense is incurred by reason of the diversion privileges, keeping track of these cars, inspecting them in transit, and especially does this become expensive when the cars are diverted from one point to another.

Commissioner Lane: And that of course is what I mean when I say those things are included in the rate?

Mr. Durbrow: In the rate?

Commissioner Lane: In the rate paid for the transportation; that is a service that is done by the railroad.

548 Mr. Durbrow: I do not quite catch your Honor's meaning.

Commissioner Lane: I mean all the diversions are services given by the railroad company?

Mr. Durbrow: Given by the railroad company.

Commissioner Lane: And included necessarily in their rate and not as refrigeration?

Mr. Durbrow: If your Honor please, we are entitled to take into consideration this entire service. We are moving a perishable commodity. The shipper may at his election have the shipment move forward under ventilation or under refrigeration, whichever he may wish. We are obliged, as the evidence will disclose here, to maintain a large force here in California, to take care of these diversions, whether they move forward under refrigeration or ventilation. We are obliged to keep these cars in such condition that the shipper may at his election move his fruit forward under ventilation or refrigeration, and we do not know which he is going to choose. You will find from our evidence that the cars moving forward under refrigeration and under ventilation fluctuate and vary very much.

Commissioner Lane: Does not your argument come to this, that if the $30 rate is stricken out, and your force has still got to be maintained in order to furnish refrigeration for the cars that need
549 it, that then you would have to charge more for your refrigeration?

Mr. Durbrow: No.

Commissioner Lane: You segregate the transportation and refrigeration charge. Now, if you do not give the refrigeration and have to maintain your organization, then you say you would have to charge more for your refrigeration, because the expense would be more. Is not that your argument?

Mr. Durbrow: No, sir. I say the charge now made to the shipper is an aggregate charge. For the purpose of this case we are separating the charge——

Commissioner Lane: The tariff does not say so. It says so much per hundred pounds for the carriage and so much for refrigeration. We are taking the wrong theory if we are taking the aggregate charge.

Mr. Durbrow: Under the law as it exists today we are obliged to segregate our charge to that man.

Commissioner Lane: The ruling of the law itself?

Mr. Durbrow: Yes, the ruling of the law itself, and under the interpretations placed upon it by the Commission. We make a charge for the movement of the car and we make an additional charge for refrigeration. Now, in the entire movement of this citrus
550 crop we have to take into consideration all the factors that will be found in the transportation of this particular commodity. In the aggregate, we have to feel assured that we are going to earn something over and above the cost of transporting the shipment, in any event, and we are entitled to something more. Under the Supreme Court's decision in the St. Louis Hay case we are entitled to some profit for the service. Taking that all into consideration, we are obliged to maintain this force of men along the line for inspection of these refrigerator cars. They have certain services to perform, as the evidence will disclose, and you will find when the car moves forward under refrigeration, that additional service is rendered by the carriers, if no other service is rendered. So far as the $30

charge is concerned, we haul six tons of additional dead weight for which we are certainly entitled to be compensated, if the shipper performs that service. I say we are also entitled to be compensated for the deterioration of the car by reason of the dampness caused by refrigeration, the rotting out of the car or insulation.

Commissioner Lane: But you have paid for that in your mileage.

Mr. Durbrow: We have paid for that in our mileage.

551 When the car moves forward under ventilation, then we have no concern with the refrigeration charges; but when the car does move forward under refrigeration, this Pacific Fruit Express Company has the right to say, "My car when refrigerated is more expensive to keep up and maintain, and I am going to make an additional charge for the increased depreciation of my car." And, as I say to you, in the balancing of considerations with the Pacific Fruit Express Company we are entitled to say, "You take as your profit whenever a car moves forward under refrigeration, the additional charge which is made by the railroad company for the transportation of the additional dead weight."

Commissioner Lane: You have 6000 pounds of ice in your refrigerator car and 6000 pounds of ice in your pre-iced car?

Mr. Durbrow: Exactly.

Commissioner Lane: So you have to carry that dead weight as it is.

Mr. Durbrow: Well.

Commissioner Lane: And in your pre-iced car you get more as a minimum?

Mr. Durbrow: Yes, but when we move a car through under refrigeration, whether you include the pre-cooling as part of the refrigeration service, where it has been performed by the carrier,

552 we are compensated for that; and just as I say, when the shipper pre-cools and pre-ices the car himself, we are entitled to take into consideration the additional cost of moving this ice.

Commissioner Lane: In a case where you refrigerate the car and have 6000 pounds of ice in there, does the rate cover the hauling of this 6000 pounds of ice, or is the refrigeration charge raised so that it covers the cost to the railroad company of hauling that ice?

Mr. J. H. Call: Which way is it? Tell us about that.

Mr. Durbrow: I do not quite catch your Honor's question.

Commissioner Lane: When the car goes under refrigeration and is put under refrigeration by yourselves, and you put 6000 pounds of ice in, is the hauling of that ice in the car provided for and taken care of in the rate, or is it taken care of in the refrigeration rate?

Mr. Durbrow: In the refrigeration charge.

Commissioner Lane: In the refrigeration charge?

Mr. Durbrow: Yes.

Commissioner Lane: Then you are charging not only for refrigeration, but for the hauling of the ice in this refrigeration charge?

553 Mr. Durbrow: In the refrigeration charge, in fixing—I will answer in this way. In fixing the refrigeration charge in the first instance we are taking into consideration in addition to

the cost of the ice the cost of refrigeration service, which is the additional expense which must be incurred in transporting the ice.

Mr. A. F. Call: Right there. When you give that car to one of the eastern lines, they are put to the expense of carrying that ice?

Mr. Durbrow: Yes.

Mr. Call: Do you give them any part of that charge?

Mr. Durbrow: I could not answer; I don't know what the arrangements are with the eastern lines, but Mr. Call's question amounts to this, your Honor: So far as the eastern line is concerned, the eastern line is obliged to provide this refrigeration service just as the Southern Pacific or initial carriers are, and they may say to the refrigerator car line company, after paying them their mileage, "Well, we are in the same condition as the Southern Pacific; we will pay to you this additional refrigeration charge which covers the expense to us of transporting this additional ice."

Commissioner Lane: Suppose there was a severance be-
554 tween the Pacific Fruit Express and the railroad absolutely so you did not own the stock and it was all held by other individuals; do you think they would be entitled to charge $30 refrigeration charge or any part of that $30 for a service which you render, namely, the transportation of 6000 pounds of ice?

Mr. Durbrow: Yes. I will answer in this way: Let us assume the Southern Pacific Company and the Pacific Fruit Express Company are entirely divorced; the Southern Pacific Company is a new line entering southern California, and wishes to engage in the citrus fruit business. Instead of providing equipment for itself it employs the Pacific Fruit Express to perform that service for it. It goes to the Pacific Fruit Express and wishes to fix a rate. They know in advance by the experience of other carriers and other shippers that a large number of the shipments are going to move forward under refrigeration, that a large number of shipments are going to move forward under ventilation. The Southern Pacific Company says to the Pacific Fruit Express Company, "I will pay you three-quarters of a cent per car mile for empty and loaded movement, whether the shipments move forward under refrigeration or ventilation. We will
555 have to take into consideration the fact that some shipments are going to move forward under refrigeration. What additional charge shall we make for that service?" The refrigeration company will say, "My principal item of expense will be my ice. I will figure my ice at so much. Another item of expense will be my inspection along the line; the expense of putting this ice into the bunkers. Another item of expense is going to be the transportation of this ice." The Southern Pacific Company may say, "I want to be compensated by you in this conventional arrangement for the transportation of this additional weight." The Pacific Fruit Express Company says, "When I transport this ice it is going to cause my car to deteriorate very rapidly. That additional expense for transporting this additional six tons of ice, I want to take that to myself. In the balancing of these considerations, you let me have that, or instead of paying me three-quarters of a cent, you pay me two-thirds of a cent, and let me take that refrigeration charge. It is

cleaner cut, it is easier of computation and easier of accounting." As I say to your Honors, it is merely a question of the conventional arrangement, it is a balancing of considerations, and so far as the shipper is concerned, it does not make any material difference at all, so long as the charge itself is a reasonable charge, so long as the factors or elements or items which go to make up the refrigera-
556 tion charge show that the charge itself is not unreasonable, or that the carriers or the refrigeration company, if your Honors choose, are not making an unreasonable profit.

Commissioner Prouty: That may be so, but the important fact that you overlook is this: The United States Government has devised a method by which this refrigeration can be done apparently for one half what it has cost by the old method. You gentlemen did not discover that, the United States Government has discovered that.

Mr. Norton: We began it.

Commissioner Prouty: Now, in some way or another, these shippers should be entitled to the benefit of that saving. Either this Commission should reduce your refrigeration charges, if you prefer to perform the service, or you should be required to let them perform the service under reasonable conditions.

Mr. Durbrow: Your Honor is arguing here from the evidence made by the complainant.

Commissioner Prouty: Well, I am not arguing——

Mr. Durbrow: I mean suggesting, pardon me, your Honor. But this is the fact, and we will show this to be the fact, and I will lay this down as a premise, and will assume it for the purpose of
557 answering your Honor's question. In the first place, the Pacific Fruit Express and the Santa Fe Despatch were pioneers in this refrigeration business. They have spent $75,000, so far as the Southern Pacific Company is concerned, in merely experimental work. We think we have brought this service now to a point where it can be performed in such a manner so it will be of some commercial value or advantage. It has gone past and beyond the experimental stage.

Commissioner Prouty: Are you talking about the pre-cooling system?

Mr. Durbrow: I am talking about the pre-cooling system. We have found by actual test and actual results of cars, by tracing these cars, that when a car is pre-cooled and pre-iced that it requires just as much re-icing to take that car on to destination in good condition as though the car had merely been refrigerated. There is a saving in the quantity of ice that is put into that car, but the saving of the ice is compensated by the fact that the pre-cooling cost about equals the saving in the ice.

Commissioner Prouty: What do you mean, that all these cars which have been pre-cooled and pre-iced here have been iced by your company in transit?

558 Mr. Durbrow: In transit, and it shows the quantity of ice these cars have consumed.

Commissioner Prouty: And you say to us that cars which have

served under this $30 pre-cooling and pre-icing charge are iced in transit by your company?

Mr. Durbrow: No, your Honor, I do not say that. That was before the tariff went into effect. Now, as I say, our records will show you the quantity of ice that has been used——

Commissioner Prouty: It is hardly worth while to talk about that. If these gentlemen are entirely wrong in their premises there is no use talking about the matter.

Mr. Durbrow: I think we will disclose that by our evidence.

Commissioner Prouty: We think we had better not discuss the matter any more until we know what the facts are.

Mr. Norton: I would like to state the position of the Santa Fe. We make no objection to their pre-cooling. We regard the pre-icing and any necessary icing which may occur afterwards to be primarily the duty of the common carrier. We think the evidence will show that in many instances, if not in most instances, subsequent icing will be necessary after the shipment leaves here, notwithstanding that they have been pre-cooled and pre-iced. Now it has developed that there will probably be many persons who cannot provide their own pre-cooling and pre-icing methods. We will permit the shippers to pre-cool at their pleasure, that is their business, but when it comes to icing the cars, that is the common carrier's business, and we can conceive that we should do nothing in the line of the common carrier's duty which would result in discrimination, and we take it it would be a discrimination to allow these people who claim by large contracts and under combination among themselves they can put cheap ice into our bunkers to do so, while the smaller grower, when he undertakes to pre-ice, must pay a higher price. Our point is that the common carrier's obligation should be performed by the common carrier at a reasonable rate, and it should be entirely separated from anything the shipper may do.

Commissioner Lane: Do you think that then your compensation should be for the ice that is put into the bunkers? You are willing, as I understand your statement, to accept a pre-iced shipment?

Mr. Norton: The shipper may present his goods for delivery in any form he pleases; that is his right.

Commissioner Lane: And then if there is icing necessary you will charge him for that right?

Mr. Norton: The pre-icing, you mean?

Commissioner Lane: Yes, the first icing.

Mr. Norton: We will charge him for refrigeration, for the value of the service.

Commissioner Lane: For that one load of ice, if that is all that is necessary, and he is willing to accept that, you will charge him for that one load of ice alone?

Mr. Norton: I do not mean to say we will charge him for the cost of the ice; we regard that as a refrigeration service which has a value above the market value of the ice; but we will charge him for that.

Commissioner Lane: You will charge him something in addition to the market value of the ice?

Mr. Norton: Yes.

Commissioner Lane: So your tariff would not be $30 for carrying a pre-iced shipment, but it would be so much for refrigeration, and that refrigeration, he might say, need only be one load of ice?

Mr. Norton: That is my understanding. And in order to prevent the discrimination which I have mentioned, when this pre-cooling matter was first tried out, the Santa Fe management put up at San Bernardino, at a cost of about half a million dollars, a pre-
561 cooling plant, so that the smaller persons who might want to get into the pre-cooling class could do so on as good terms as were enjoyed by larger shipping concerns.

Commissioner Lane: You want to retain the right to ice the cars yourself?

Mr. Norton: Yes.

Commissioner Lane: They are trying to protect themselves by a tariff against the cheap lemon of Sicily. You are trying to protect yourself against the cheap ice of Los Angeles.

Mr. Norton: Well, after the applause subsides, I will state that we believe and have been laboring under the impression for a good many years that Vice-President Hodges of our company is probably one of the most capable purchasing agents in the United States, and when he pays any price for ice at Los Angeles, it is the lowest. We will examine the contracts those people have and find what obligations the contracting parties are under to each other, and whether ice will be furnished to them if all the available ice in this part of the country were to cease for any reason. When it comes to the price of ice I think we will justify our position fully. But we claim that to allow one man to climb upon our cars and put ice in our bunkers is a discrimination against those who cannot
561½ do it, as much as it would be if one of you gentlemen were to enter our sleeping car at Chicago and insist upon occupying a berth without charge.

Commissioner Prouty: Suppose you put two cars on, in one of which the man should furnish his own bedding——

Mr. Norton: Well, we have not that class of equipment.

Commissioner Prouty: There would not be anything discriminatory about that.

Mr. Norton: If the Commission can compel us, I think we should be compelled to add to the equipment, but Mr. Leeds testified we are carrying all the equipment we ought reasonable to be required to carry.

Commissioner Prouty: You are discussing the thing that troubles me. It seems to me there might be some discrimination.

Mr. Norton: That is the point, and we feel that the line which separates the carrier from the shipper, the shipper may present his goods to us, but beyond that line, the common carrier line, we think he has no right to enter, and that any invasion of our function as a common carrier under the law will necessarily, as we view it, result

in discrimination, and for that reason President Ripley ordered the construction of this pre-cooling plant at San Bernardino.

562 Commissioner Lane: And you do not want any more for the service you have rendered after you have taken the pre-iced shipment than the cost of rendering that service plus the profit.

Mr. Norton: I cannot answer that in detail. We think the shipper may present his pre-cooled shipment to us and then we will pre-ice it, and if necessary, in transit, on account of washouts or otherwise, additional service is needed—let the Commission name us a reasonable charge for the refrigeration service which we render for the pre-cooled goods delivered.

Commissioner Prouty: The objection to that seems to be that the ice ought to be supplied at the packing house when the car is loaded. We held with reference to the car stake that that could be better supplied by the shipper than by the railroads.

Mr. Norton: Yes.

Commissioner Prouty: Now we are asked to hold with reference to ice that it can be better supplied by the shipper than by the railroads.

Mr. Norton: Yes, your proposition is simply this, that to get the full benefit of pre-cooling, the fruit should be pre-cooled in the house——

563 Commissioner Prouty: No, the ice should be put in the car when the pre-cooled fruit is placed in the car at the packing house, and you cannot conveniently do that, because you have no ice at the packing plant where the fruit is pre-cooled by the packers.

Mr. Norton: We have ice convenient, Mr. Chambers says.

Commissioner Prouty: So you could do that?

Mr. Norton: Yes, and by the way, that reminds me, your Honors seemed to have the idea in putting the question to Mr. Leeds that we have to assemble all this fruit before icing at San Bernardino. We ice at San Diego and also here, and we have ice available at these points, and not only at the large icing points named by Mr. Leeds, but at all division points along the way, we have ice for other purposes in smaller ice houses, so that hardly any contingency can arise in the matter of delay or otherwise, in the shipment of this fruit which we cannot meet with refrigeration. Mr. Chambers says we are supplying pre-iced cars now for the additional charge of $7.50 anywhere.

Commissioner Prouty: That is, you cool the car before the fruit is placed in the car?

Mr. Norton: Yes. But that is the position of the Santa Fe in this matter.

564 Commissioner Lane: Do you state in your tariffs that you will take a pre-iced shipment?

Mr. Chambers: We will pre-ice a car and set it at the loading point, for $7.50.

Commissioner Lane: And let them put it in and take the risk?

Mr. Call: They add that to the regular charge.

Mr. Chambers: We add that to the regular charge.

Commissioner Lane: That is in addition?

Mr. Chambers: Yes, sir.

Mr. Durbrow: Your Honors understand the shipper may precool his shipment and move it forward without any additional charge at all, he has that privilege.

Commissioner Prouty: Well, Mr. Matthews, if you know where we left off, you may proceed.

Mr. Matthews: That is all I want to ask.

Mr. J. H. Call: I have not seen these contracts between the Santa Fe Despatch Company and the Santa Fe Railroad. I understand you are going to produce them?

Mr. Norton: Yes, they are here.

Mr. Leeds: No, those are not. I stated yesterday I was unable to produce that here, but gave while on the stand the corrected features of that contract which were referred to.

565

Mr. Call: I understood you to say that you regarded the Santa Fe Refrigerator Despatch as an adjunct of the railroad company?

Mr. Leeds: The railroad company owns it.

Mr. Call: They own it and you regard that as practically the railroad company?

Mr. Leeds: Not necessarily, no.

Mr. Call: They are performing the service for the railroad?

Mr. Leeds: We are an operating corporation, and we do make contracts or engagements that the railroad has no part in.

Mr. Call: It is one way or the other; either they are a carrier themselves or they are an adjunct of the railroad. Which way do you regard it?

Mr. Leeds: In what respect?

Mr. Call: Do you regard this refrigerating service as being done by the railroad company through the Despatch as a service of the railroad, or do you regard it as a service of the Despatch as a carrier?

Mr. Leeds: The railroad company publishes the tariff under which service is performed, as all railroads do in the United States today.

566

Mr. Call: I understand how the tariff is made, but——

Mr. Leeds: Well, that answers the question.

Mr. Call: You regard it as an adjunct of the railway, then?

Mr. Leeds: So far as the carrying out of that tariff is concerned, it has to be, under the law.

Mr. Call: State what proportion, if you can give it, of the mileage of the refrigerator company is performed in the carrying of refrigerated fruits?

Mr. Leeds: I do not think I can answer that question; in fact I know I cannot, because it has not been segregated.

Mr. Call: The mileage that the railway company pays your refrigerator company is based upon what, the entire mileage?

Mr. Leeds: All of the miles that the cars travel on their rails, loaded or empty.

Mr. Call: And during what period does the railroad company have the use of those cars when they are not refrigerated?

Mr. Leeds: On the return in the opposite direction from whence the perishable freight is to be moved, they are used as largely as possible for loading in that direction.

Mr. Call: Does your refrigerator company collect for its own use for the refrigeration of westbound freight?

Mr. Leeds: There is practically no westbound refrigerated
567 freight which moves in our equipment.

Mr. Call: You mean to say, then, that you do not get anything for refrigeration westbound, practically?

Mr. Leeds: Very little, if any.

Mr. Call: What about the packing house products?

Mr. Leeds: The packing house products usually move in their own equipment.

Mr. Call: Well, they can move in refrigerator cars, can they not?

Mr. Leeds: Certainly.

Mr. Call: And you know, as a matter of fact, they do move in refrigerator cars?

Mr. Leeds: If we were asked to supply one we would do it, yes, sir.

Mr. Call: Do not the railway companies habitually use the refrigerator cars when they are needed for the westbound movement?

Mr. Leeds: The cars are distributed by the Superintendent of Transportation of the railroad on whose rails they are.

Mr. Call: When the packing house companies in Chicago use the refrigerator cars westbound do they or do they not pay the Santa Fe Refrigerator Despatch Company for refrigeration?

568 Mr. Leeds: We get the refrigeration earnings, whatever it may be.

Mr. Call: I am asking you as a fact, whether you do get anything from the packing house.

Mr. Leeds: Yes, we get on westbound continental business a small refrigeration charge.

Mr. Call: So that you get a refrigeration charge on westbound business on packing house products?

Mr. Leeds: Yes.

Mr. Call: What is that charge from Chicago to Los Angeles?

Mr. Leeds: That charge takes effect at the Missouri River. Is not that true, Mr. Chambers?

Mr. Chambers: At the Missouri River, yes.

Mr. Leeds: At the Missouri River.

Mr. Call: It takes effect there?

Mr. Leeds: At the Missouri River.

Mr. Call: That is, you charge nothing from Chicago to the Missouri River?

Mr. Leeds: No, the icing to there is supplied by the shipper himself, or the packer, whoever it may be.

Mr. Chambers: $2.50——

Mr. Call: Just a minute——

Mr. Leeds: Wait a moment. Maybe I am wrong.

569 Mr. Chambers: I want to correct him on the ice between Chicago and the Missouri River; it is supplied at $2.50 per ton, and in addition to that, it is $25 west of the Missouri River.

Mr. Call: That is to say, the Refrigerator Despatch Company charges $2.50 per ton for ice?

Mr. Leeds: The Santa Fe Railroad charges that.

Mr. Call: The Santa Fe Railroad charges that?

Mr. Leeds: Yes, sir.

Mr. Call: For their ice?

Mr. Leeds: Yes, sir.

Mr. Call: What part of that goes to the Despatch Company?

Mr. Leeds: None whatever.

Mr. Chambers: Then what do you do from the Missouri River to the Pacific terminals, do you get refrigeration?

Mr. Leeds: We supply that ice and take the refrigeration.

Mr. Call: You charge the refrigeration rate for that transportation?

Mr. Leeds: Yes, sir.

Mr. Call: What is that charge?

Mr. Leeds: $25.

Mr. Call: $25 a car?

570 Mr. Leeds: Yes, sir.

Mr. Call: From the Missouri River to Pacific Coast terminals?

Mr. Leeds: Yes.

Mr. Call: Now, then, that is a uniform charge for all refrigeration, or does it just apply to packing house products?

Mr. Leeds: That covers certain commodities. I do not think that covers it all——

Mr. Call: You have no tariff charge between Chicago and the Missouri River?

Mr. Leeds: Not on that class of stuff, no.

Mr. Call: You allow the shipper, you say, at Chicago to ice the car, give it its initial icing, and make no charge for that; is that what you said?

Mr. Leeds: The shipper makes the initial icing and he takes it out of the store house and initially ices his car and it is delivered to us at the Missouri River.

Mr. Call: Explain to me why you make a different arrangement on westbound refrigeration, as to allowing the shipper to give it its initial icing without charging for it, and make a charge to the shipper on this coast here when it is eastbound?

571 Mr. Leeds: So far as that is concerned, I do not control that situation at all. That is a competitive proposition. The service is not charged for on its value, and it is a thing that has been——

Mr. Call: Why do you not charge for its value?

Mr. Leeds: You tell. I don't know.

Mr. Call: Doesn't it strike you that is a rank discrimination as between the shippers in Chicago shipping west and the shippers on the Coast shipping east?

Mr. Leeds: You ought to ask somebody else whether they believe that is a discrimination or not.

Mr. Call: I thought maybe you were an expert on these matters.

Commissioner Prouty: When the shipment originates at Kansas City is your charge $25?

Mr. Leeds: Yes, sir.

Commissioner Prouty: Does not the shipper ice that car at Kansas City?

Mr. Leeds: Yes, sir.

Commissioner Prouty: You take the car initially iced and perform the balance of the service for $25?

Mr. Leeds: Yes, sir.

Mr. Matthews: Do you take the $30, I mean the Santa Fe
572 Despatch Company?

Mr. Leeds: Yes, sir.

Mr. Matthews: Is it divided with your eastern connections, or does your company retain it all?

Mr. Leeds: We retain it all.

Mr. Matthews: These services that are charged up against your department for cleaning the cars and making repairs, you do not do any of that; that is done by the employees of the road and charged to you?

Mr. Leeds: That is right.

Mr. Matthews: Are you familiar with the contract with the Armour Company as to the leasing of cars?

Mr. Leeds: No, I do not think I am.

Commissioner Prouty: The Commission has all those contracts before it, Mr. Matthews.

Mr. Matthews: We desire leave to refer to them in the argument, because there is a provision about the ice. There is no charge for the carrying of the ice when Armour leases the cars.

Mr. Norton: What is that statement?

Mr. Matthews: There is a mere mileage charge, and the refrigeration charges are retained by the Armour Company, and no
573 charge made by the railroad company.

Mr. Norton: When the Armour Company furnishes its car and loads it own car.

Mr. Matthews: You carry some cars which are iced right in the package, like fish, and so forth?

Mr. Leeds: No, those are all carried—we do not put any of those in our equipment. We do not allow its use in that way.

Mr. Matthews: Do you transport any beer westbound?

Mr. Leeds: No—we might transport beer with refrigeration in the bunkers of the car, but not as you are trying to get at it, I think. What you are trying to get at is being refrigerated in the body of the car. We do not do that; that is a railroad proposition.

Mr. Matthews: The railroads do make an allowance for so much ice in the car itself with the package, on a number of commodities, do they not?

Mr. Leeds: I think the classification provides something like that. I don't know just what it is.

Mr. Matthews: I think that is all we care to ask now, but when we have examined these contracts, we may want to ask one or two more questions.

574 Commissioner Prouty: We will now adjourn until one thirty o'clock.

(Whereupon, the hour of 12:15 o'clock having arrived, a recess was taken until 1:30 o'clock p. m.)

575 After Recess.

1:30 p. m.

J. S. LEEDS resumed:

Commissioner Prouty: Have you any further questions, Mr. Matthews?

Mr. Matthews: No, we are all through.

Cross-examination:

Mr. Norton: Mr. Leeds, I would like to ask you if you know who started this practice of pre-cooling, who first experimented with it?

Mr. Leeds: The first experimental work I ever knew in connection with the handling of fruit was done by Mr. Sprague, and as near as I know the first experiments were tried on our rails and I helped him to some extent in doing so.

Mr. Norton: Did you try the pre-cooling in the house as the shippers here have mentioned?

Mr. Leeds: Not in connection with Mr. Sprague's experimental work, but we did build a small pre-cooling room with a capacity I think of about eight cars at San Bernardino and I believe that was done at an expense of about $20,000.00.

Commissioner Prouty: When was that, Mr. Leeds?

Mr. Leeds: That I think was in 1907, I believe, when we
576 used it. It was 1906 or 1907. We unloaded fruit in that house and pre-cooled it and re-loaded it into the cars and sent it forward. We subsequently abandoned that as being impracticable.

Mr. Norton: Do you know whether any experiment has been made in pre-cooling as you are now prepared to pre-cool at San Bernardino, by the Government?

Mr. Leeds: Yes, they have got a car in service now that they are using that way. They use it to some extent I think on the rails of both the Southern Pacific and the Santa Fe in Southern California, and I believe that car is now somewhere in northern California; it was used in connection with deciduous fruits to some extent.

Mr. Norton: Your method at San Bernardino is to cool the car after it has been loaded?

Mr. Leeds: Yes, sir.

Mr. Norton: Some inquiry was made of you about the balance you have from your refrigeration earnings, your car earnings, after paying for the ice? What did you state that balance to be?

Mr. Leeds: You mean what disposition is made of the balance of the refrigeration earnings after the ice is paid for?

Mr. Norton: Yes.

577 Mr. Leeds: That goes into our revenue along with the revenue earned from mileage and it is used with the balance for maintenance of line and upkeep of cars.

Mr. Norton: Does the refrigeration of the citrus fruit pay for its proportion of the upkeep of the cars?

Mr. Leeds: I do not think so. As near as I can arrive at it, the receipts from refrigeration after the payment for the ice we use is about 20 per cent of the gross revenue of the car line. Now there is more than 20 per cent of this business that moves under refrigeration, I mean as a whole, and so long as only 20 per cent of our gross available revenue for expenses comes from refrigeration, the refrigeration part of it is not paying its proper proportion of the upkeep of the line.

Mr. Norton: Your attention was called to the loading of their own cars already refrigerated by packers in East and to the rates which you charge on westbound trans-continental business.

Mr. Leeds: Yes.

Mr. Norton: I will ask you to state whether the rates which you charge on that business are not made necessary by the competition which those car owners have?

Mr. Leeds: That comes entirely from competition. As a matter of fact it is not controlled nor has it ever been controlled

578 by the car line itself.

Mr. Norton: Well in addition to that the packers mentioned pay heavier freight rates for the transportation of their cars, do they not, than the parties to this complaint?

Mr. Leeds: I understand that to be the case, but I am not prepared to testify to that. I am not familiar with the exact figures of the railroads.

Mr. Norton: I believe, Mr. Commissioner, that from other cases you are so familiar with the way the rates are made, namely that originally the Santa Fe hired cars from outside parties, that it is unnecessary to show by this witness that the present freight rates were put into effect as a rate which should be made in view of the fact that we owned no equipment.

Commissioner Prouty: You mean the refrigeration of the cars?

Mr. Norton: No, the freight rate itself.

Commissioner Prouty: The Commission has investigated this matter of refrigeration on your line and on almost all other lines in the United States a good many times. We think we know in a general way what the history of the matter has been.

Mr. Norton: Of course our theory is that the two rates, the freight rate and the refrigeration rate, are two common carrier rates.

579 Commissioner Prouty: They undoubtedly are.

Mr. Norton: And they have necessarily grown up separately because of the beginnings of the business. I will not go over that with Mr. Leeds, but will save that much time. I understand the

ice furnished to you by the Santa Fe company is furnished at the cost price paid by it?

Mr. Leeds: That is the contract, yes, sir.

Mr. Norton: Also where ice is hauled from one icing station to another by the Santa Fe in time of ice famine or for other reasons the haul is made at company material rates?

Mr. Leeds: Yes, wherever any transportation is involved in the handling of ice for refrigeration purposes for the Santa Fe Refrigerator Despatch Company it is done at the company material rate.

Mr. Norton: Not only that, but all other supplies and materials used by your company are hauled at such rates?

Mr. Leeds: Well we probably have no other material. I do not recall. Such would be the case, however, if we had any. I think the contract is broad enough to cover that, yes, sir.

Mr. Norton: Anything hauled that way would be charged to you the same as the company would charge itself in its account?

Mr. Leeds: Yes, sir.

580 Mr. Norton: Reference was made to your having offices along with the Santa Fe Company in Chicago. You are thereby benefited by the large office contract which the Santa Fe Company has, are you not?

Mr. Leeds: Yes, we get our rental at——

Mr. Norton: At a lower rate than you could get it yourself independently?

Mr. Leeds: Yes, sir; that is, we get it for something less than the going commercial rate in the building.

Mr. Norton: You spoke yesterday of the shippers having available to them a forty-eight hour delay at Denver to search for a market, and then at some other place, say Omaha. The market failing at Denver; then at Chicago and then elsewhere. Have they the benefit of a forty-eight hour delay without demurrage charges at all those places?

Mr. Leeds: Yes, the only demurrage charge that holds against the movement of perishable freight in refrigerated cars is the car service penalty of one dollar per car per day. There is no penalty for any delay in a refrigerator car for any length of time other than that, and we do not get that.

Mr. Norton: Cars are diverted as I state four or five or more times in practice, and do you maintain the icing during

581 these delays?

Mr. Call: I do not think he said that they were commonly diverted four or five times.

Commissioner Prouty: There has been some testimony that that might be done.

Mr. Norton: We will show that by another witness. But however many the diversions may be, few or many, you maintain the standard of icing without extra charge?

Mr. Leeds: Yes, I can give an approximation of the diversions I presume. I think we make, if you call each diversion that is made of a car, whether it is one or two or three times, if you count each one of those a diversion, we make nearly as many diversions as we

handle cars of citrus fruit; and if you count it by cars, I made a calculation on that some time ago; I think however that it is less today; but at that time, there was about 1.8 diversions for each car diverted.

Mr. Norton: Now in the establishing of these icing facilities at The Needles, Winslow and other places along the line at the time your icing contracts were made, there were no facilities at those points?

Mr. Leeds: No.

582 Mr. Norton: To procure ice, for example at The Needles it was necessary to insure the parties constructing the plant there in order to induce them to make the investment, that you would take a certain tonnage of ice per annum, is that correct?

Mr. Leeds: I don't know whether I am competent to testify with respect to The Needles, because that contract was in existence.

Commissioner Prouty: Who made that contract, Mr. Leeds or the Santa Fe Company?

Mr. Norton: The Santa Fe Company.

Commissioner Prouty: Did Mr. Leeds make the contract in any case for the Santa Fe Company?

Mr. Norton: No. But I was assuming that he was familiar with the gross of this business and with the contract also.

Commissioner Prouty: I was only going to suggest that we do not want to cover this ground twice, and that the Complainants might desire the testimony of some person who was familiar with the making of the contract.

Mr. Norton: That thought occurred to me this morning, that on account of the detail they have gone into this, we might find it desirable to examine Mr. Hodges some day in Chicago, the General

583 Purchasing Agent, and have him explain how these contracts were made.

Commissioner Prouty: Unless there is some good ground for showing the contract, I think the Commission would be disposed to assume that you had purchased this ice as cheaply as you could purchase it. If your officials are interested in the ice plant, if there is any dual relation of that character, it might lead to a contrary presumption; but unless there is some reason to doubt the honesty of the transaction, we should assume your company bought the ice as cheaply as it could.

Mr. Norton: That is all I was going to show, and at the same time when we have an opportunity to inquire we will show from the contract the assurances which they give us to furnish this ice and the opportunity we have to buy and that the lowest rates obtainable were made, so I will pass that for the present at least.

Have you studied refrigeration on other railroads in the United States than on our own?

Mr. Leeds: You mean——

Mr. Norton: Reference was made by the Commissioner this morning to cheaper refrigeration rates on the Northern Pacific. I

want to inquire of you whether the Northern Pacific has any
584 such desert and heated country to cross?

Commissioner Prouty: The Commission already knows it has not. I did not intend to testify in the case, but somebody remarked that there were no cheaper refrigeration rates, and I happen to know there were lower ones on the Northern Pacific. I have investigated that and know the cost of the ice and the manner in which it is procured. It is all natural ice and very cheap and the quantity required is not as great as it is on the southern lines.

Mr. Norton: Yes. They have no Needles and no Winslow and no Las Vegas on that line. Now you have had experience as a freight traffic man as well as a refrigerator despatch man?

Mr. Leeds: Yes, sir.

Mr. Norton: How many years were you in the traffic business?

Mr. Leeds: I have been in it more years than I like to confess.

Mr. Norton: Well a good many years?

Mr. Leeds: Yes.

Mr. Norton: Can you state from your experience whether the freight rate as well as the refrigeration rate on citrus fruit as charged by the Defendants in California at [illegible] is reasonable?

585 Mr. Call: I hardly know what is proper, but it hardly seems to me that that is proper.

Commissioner Prouty: I think Mr. Leeds may answer that question.

Mr. Norton: He is very expert, if you want to take time to qualify him.

Mr. Leeds: Yes, they are; I think both are defensible.

Mr. Norton: Inquiry was made as to the separate organization of the car company. I wish you would state as briefly as you can the need of a separate organization, notwithstanding that the Atchison Company owns the stock of the car company.

Mr. Leeds: Well, the transportation department of the railroad of course is the one which would naturally be expected to look after the movement of the traffic after it is ready to go. The organization of the transportation department of a railroad is not made up in a way to insure the best results in a business that moves over a long distance. It is divided into several divisions, you know, and each division superintendent gets through with the train as it passes from his division. A car line is a system organization and we have authority to do business at any point or with any employee of the Atchison road who is interested in the handling of perish-
586 able freight in any way; and they accept our orders and directions in the handling of this business direct. And furthermore in the handling of the business beyond the rails of the parent line or the originating line, I will call it, we work direct, and we also work direct with the shipper or consignee with respect to the movement of this at any point in the journey from the point of origin to destination.

Mr. Norton: You follow the car on to the lines of other common carriers?

Mr. Leeds: Yes, sir.

Mr. Norton: And are you permitted thereby to give the car better care en route than it would have even from the best organized operating management?

Mr. Leeds: We hold ourselves responsible for the proper refrigeration of a shipment, for example, from point of origin to destination, irrespective of the origin or destination of the shipment if it is in our care or under the stated refrigeration rate.

Commissioner Prouty: Why could you not do that same work as a department of the Santa Fe Road? You are now an independent company.

Mr. Leeds: Why, as an independent operating company
587 it enables us to go make a contract with somebody else, you understand. It is more convenient for us to do that than it would be if we were operating under half a dozen different heads of the originating line. We may go out and handle a small block of business, say from the Colorado Midland Railroad, if we had the cars to spare, or we would go and make an ice contract outside of our own system line.

Commissioner Prouty: So that the occasion of the organization of your carline company was an operating and not a financial condition.

Mr. Leeds: That seems so.

Mr. Norton: It is a wing of the operating department, a superior operating arrangement, we conceive it to be. It enables you also to let the cars to other users, other lines.

Mr. Leeds: Yes, we sometimes if we have a little slack season, suppose the Michigan Central had some grapes moving over other lines we would turn the cars over to them and let them use them in their business. We have done that on one or two occasions. We do it in the Lake Shore in the grape business in the Lake region.

Mr. Norton: I will not examine him about the advantages of diversion. I think that is well enough understood.

588 Commissioner Prouty: I think so.

Mr. Norton: A word about the detention of these cars at destinations——

Commissioner Prouty: Before you go to that, you said that the diversions were in number more numerous than the cars used. I assume that they are as numerous. Do you also mean to say that a diversion invariably occasions a delay in the movement of the car?

Mr. Leeds: Not necessarily.

Commissioner Prouty: The diversion is frequently made before the car reaches the point at which the diversion takes place?

Mr. Leeds: Quite frequently.

Commissioner Prouty: Have you any opinion as to the delay which is occasioned owing to these diversions?

Mr. Leeds: There is more delay at a terminal say like Kansas City or Chicago than there is apt to be in the handling of a diversion in transit. A diversion in transit, unless—for example they may consign what they call tramp cars to some intermediate point

convenient for diversion to half a dozen different routes to market. I call to mind the——

Commissioner Prouty: I understand how all that is. Do you know how much delay is occasioned in the movement of
589 these cars by the fact that they are diverted?

Mr. Leeds: We habitually have something more than fifty cars on the track at Chicago waiting disposition.

Commissioner Prouty: How long do you hold those cars on the track before you place them for unloading?

Mr. Leeds: They may be ordered for the team track before their arrival, and they go immediately there.

Commissioner Prouty: Suppose they are not ordered to the team track, how long do you hold them before you do place them on the team track?

Mr. Leeds: Well I think that would be a question of understanding between the consignee, if he was a habitual shipper, and the railroad. They might want to divert the car and we would not place it on the team track with a customer of that kind, I understand, unless he so ordered it. The team track in a good many of these places happens to be five or six miles away from the outer yard and that is a question of local understanding more than anything else.

Mr. Norton: Mr. Chambers tells me there is no limit; they are held for forty-eight hours.

Mr. Chambers: Held for forty-eight hours free.

Commissioner Prouty: After forty-eight hours demur-
590 rage begins?

Mr. Chambers: Yes.

Commissioner Prouty: Do you say, Mr. Chambers, that these cars can be held for forty-eight hours at several different points, the same car?

Mr. Chambers: The same car.

Mr. Norton: Mr. Leeds, take this example; a train of citrus fruit is moving East and you get an order to divert a car from that train we will say at Burton, Kansas, that is the junction with the Missouri Pacific. I think the Commissioner's question relates to a circumstance of that sort. What delay is occasioned by taking that car out at Burton and setting it over to the Missouri Pacific and having it fixed up and started in movement again by the other line; have you any record to show what such time would be?

Mr. Leeds: I have no record to show just what that would amount to; but it would be a question of train connection, of the two lines; there would be bound to be some delay.

Mr. Norton: And the whole train would be delayed there for some time at least?

Mr. Leeds: In switching.

Mr. Norton: And the train would move on from that point
591 with a lighter load than the engine is capable of handling unless it could pick up another car in place of it?

Mr. Leeds: That would naturally follow.

Mr. Norton: As a final question on your method of handling this business, what about the time that you are making to Chicago?

Mr. Leeds: You mean our average time?

Mr. Norton: Yes.

Mr. Leeds: I made a calculation which embraced 180 trains for the year as an average proposition by taking 15 trains in each month and selected at random. In the year 1909 our average time for the entire year counting all of the trains that we handle from San Bernardino to Chicago was 178 hours and 25 minutes; that was 13 hours and 45 minutes less than eight days.

Mr. Norton: That has been the business for the last year?

Mr. Leeds: Yes.

Commissioner Prouty: How long after you take the car from the packing house before it leaves San Bernardino?

Mr. Leeds: Those cars are gathered up in the afternoon and evening and leave the same night.

Commissioner Prouty: Leave the same night?

592 Mr. Leeds: Between that and the following morning some time; I think sometimes we are, as late as eight o'clock, are we not, Mr. Chambers?

Commissioner Prouty: So your average is about eight days from the packing house to Chicago?

Mr. Leeds: I should think that would be a very close estimate.

Mr. Norton: Mr. Barnwell can answer that question. How long from the taking of the car until it is put in the train for movement from San Bernardino?

Mr. Barnwell: Our regular train out of San Bernardino is due to leave there at three o'clock in the morning, but during the heavy shipping season we start those trains out as much earlier than that as we can, and we begin picking up those cars from the packing houses at two, three, four or five o'clock in the afternoon.

Commissioner Prouty: It is sufficient to say about eight days is your average time from the packing house to Chicago?

Mr. Barnwell: And many of those trains leave San Bernardino as early as nine o'clock at night.

Mr. Norton: Now, Mr. Leeds, a few words on the providing of equipment and the difficulty of arranging for it to have it 593 in time for the movement of the fruit. Have you any facts before you from which you can explain to the Commissioner the extra attention given to this subject?

Mr. Leeds: We are continuously using the wires and hurrying up equipment. We are doing that right now, this minute, this day so far as that goes; and in addition to that I sometimes gather in all the traveling men I have got or nearly all of them and send out to the most promising points to get cars together in order that they may be available for this business here.

Commissioner Prouty: This business is a fairly constant business, is it not, Mr. Leeds?

Mr. Leeds: It moves in about four months as a busy proposition.

Commissioner Prouty: Can you determine with considerable accuracy about when it will begin to move?

Mr. Leeds: Ordinarily, yes; but we cannot tell in what volume it will move because the oranges may remain on the tree you understand; the market largely controls that.

Commissioner Prouty: Do you find it necessary to park your cars in the West in large numbers?

Mr. Leeds: Yes, sir.

Commissioner Prouty: In how large numbers do you park those cars?

594 Mr. Norton: That was what I asked him for a moment ago.

Mr. Leeds: In January, 1909, we had west of Albuquerque according to my memory 2,687 cars. We started in *in* November 1st with 1,867 cars. Now we accumulated during that period from the first of November to the first of January the difference which was say 700 additional cars. I think we have idle on the lines out here beginning with the beginning of the season almost habitually every year about 2,000 cars for a period of four months.

Commissoner Prouty: How many cars have you west of Albuquerque today?

Mr. Leeds: We have between 1200 and 1400 right now, including those moving eastbound loaded.

Commissioner Prouty: How many empty cars have you in California?

Mr. Leeds: That constitutes the empty cars in California. My calculation is made on the interchange at Belen and Albuquerque, and I call a car on the Coast Lines when it passes from the eastern system to the Coast Line System——

Mr. Norton: Can you furnish a statement Mr. Leeds showing the assembling of these cars and the holding of them empty and

595 the number of empty car days which are incurred by the company in its preparation to meet the exigencies of this fruit movement?

Mr. Leeds: That is easily done. I have that constantly before me, say as often as once in ten days, in order to take care as far as I can of the cars.

Mr. Norton: To save time I will ask to file that. I think he can give me a more connected statement.

Commissioner Prouty: You may file that. Are you required to pay damages because you do not have cars when they are called for by these shippers?

Mr. Leeds: I do not think—as far as that is concerned we never have paid any damages to my knowledge on that score. I have always had the cars.

Mr. Call: What?

Mr. Norton: He has always had the cars. I think you have testified in your direct examination that two kinds of equipment are not practical, that is, the refrigerator equipment and ventilator equipment.

Commissioner Prouty: He has already gone fully into that.

Mr. Norton: Taking up these refrigerator cars and the loading

space they have and weight and so forth, have you any com-
596 putation showing the waste space in a train of these cars as compared with a train of other cars?

Mr. Leeds: I did make up a little calculation of that kind, yes, sir.

Mr. Norton: Let us have it.

Mr. Leeds: I will give it to you in a minute. I made a computation based on a forty car train of refrigerator cars of our standard equipment, forty feet long outside measurement. The train exclusive of the space between cars would be 1600 feet long and the longitudinal loading space in that train of forty cars would be 1296 feet 8 inches. A box car train of forty-four cars would be 16 feet less in length and would have a longitudinal loading space of 1540 feet, a difference in favor of the box car train of 243 feet and 4 inches.

Mr. Norton: That is feet in length?

Mr. Leeds: That is feet in length, that is lineal loading space. The loading dimensions in other respects are virtually the same.

Commissioner Prouty: How much space in the car does the ice bunker occupy?

Mr. Leeds: 17¼ per cent in a forty foot car.

597 Commissioner Prouty: I refer to the length of the car entirely. It appears these oranges are loaded two boxes high?

Mr. Leeds: Yes, sir.

Commissioner Prouty: As I understand on end, the boxes stand on end, as that one does (indicating)?

Mr. Leeds: Yes, sir.

Commissioner Prouty: If there were no bunkers in the car you say you could load 17¼ per cent more oranges in the car than with the bunker?

Mr. Leeds: I think it will figure out that way exactly.

Commissioner Prouty: Something was said about the collapsible bunker?

Mr. Leeds: Yes, sir.

Commissioner Prouty: Which is a bunker that can be taken out or gotten out of the way so that the oranges can be loaded underneath the bunker?

Mr. Leeds: Yes, sir.

Commissioner Prouty: Do you have cars of that kind?

Mr. Leeds: Yes, I think I had probably as much to do with the introduction of that car as anybody else. So far as I can see today that is yet experimental.

Commissioner Prouty: In what respect?

598 Mr. Leeds: We do not know whether that car is going to operate as we anticipated or not. If it does not, you understand, the ice bunkers can be put down and left down and it will be just the same car as the other.

Commissioner Prouty: Does that construction in any way interfere with the ice bunker when the ice bunker is put down and used for an ice bunker; in other words, is the car when the ice bunker is down and the car is being used as a refrigerator car just as good as any other refrigerator car?

Mr. Leeds: Yes, or we would not have made it so, or at least we intend it shall be.

Commissioner Prouty: What is the doubt in your mind, as to whether the fruit will carry underneath the ice bunker?

Mr. Leeds: No, sir; it is simply a question of operation of the car.

Commissioner Prouty: In what way?

Mr. Leeds: The object mainly in the construction of a car of that kind was that it might be utilized in the opposite direction to better effect, say with loading of merchandise or dead freight, than if it had the bunker in. If the bunkers were up in the roof of the car you might load something perhaps that you would not be able to load on account of the space occupied by the bunker; and
599 besides that the load would distribute itself better over the floor of your car.

Commissioner Prouty: Now you do get the bunker up out of the way, so what is the doubtful feature of the car?

Mr. Leeds: We don't know whether it will continue to work so that it will be feasible to handle it, and our present car may be crude——

Commissioner Prouty: What is going to happen so it will not work?

Mr. Leeds: If the car would get a little out of shape and the thing would not go up or down then it would not work.

Commissioner Prouty: You mean you do not know whether you will be able to put the bunker back?

Mr. Leeds: We don't know that yet very definitely, furthermore there is no change made; It does not have particular reference to the handling of the perishable freight except that we can handle it for dead freight with the bunkers up if they will go up and down——

Commissioner Prouty: How much more does it cost to construct that car than it does the ordinary refrigerator car?

Mr. Leeds: I do not know, but quite a sum; not many hundreds of dollars but one hundred dollars or more.

600 Commissioner Prouty: Can a refrigerator car be changed into a car of that kind, one of your present refrigerator cars?

Mr. Leeds: We did build some cars over, and in fact the first collapsible bunker cars we had in our possession were built-over cars, but they were cars that were set aside for reconstruction anyhow, so we don't know. Those cars of course cost something like $700.00 to reconstruct, but that would not be a fair statement of what it would cost and I don't know.

Mr. Norton: I understand it takes seven or eight men to manipulate those bunkers, put them up and down. Do you know about that?

Mr. Leeds: Well it will require three good men, pretty good ones too; I would not want to take a third of it.

Mr. Call: One jack would do it, would it not?

Mr. Leeds: It might.

Mr. Call: Three railroad men or one jack in the hands of a packing house employee.

Mr. Norton: What about the smallness of loads which you can put in a refrigerator car. Is there any restriction on the loading?

Mr. Leeds: Our cars are scheduled to carry 60,000 pounds. But we have restricted the loading of that car to 50,000 pounds on
601 account of the burden being thrown to the center of the car, more by reason of the occupancy of the ends by the bunkers.

Mr. Norton: In addition to that restriction is there any restriction as to the variety of commodities which may be put into them?

Mr. Leeds: Yes. I expect our circular would give you more information on that point than I can state offhand.

Mr. Norton: Just read a few of them for illustration.

Commissioner Prouty: Now Mr. Norton, it appears as a matter of fact that about what per cent of your cars come back empty? Did you testify or did somebody say 70 per cent came back loaded?

Mr. Norton: He said 70 per cent, but that is erroneous. What is the percentage, Mr. Peabody, 31 per cent?

Mr. Peabody: 31 per cent.

Commissioner Prouty: Mr. Peabody will testify to that?

Mr. Norton: Yes.

Commissioner Prouty: You undoubtedly load back what cars you can?

Mr. Norton: Sometimes we bring empties on account of the speed, but I refer to the large number of commodities that we cannot put into that car, even if we had time to load it, because of the
602 odor of——

Commissioner Prouty: The important thing is that so many do come back empty and Mr. Peabody will know what the percentage is.

Mr. Norton: And still more important in addition to that is when we have loads which we might put into those cars we cannot put them in and use them elsewhere on the system even when they are coming back here, they must travel back empty on the other parts of the system, not only westbound but in other states, because we make it a rule not to load certain commodities in the car. Read some of them.

Mr. Leeds: It says, "The following articles must not be loaded in refrigerator cars: Beer barrels (empty), beer, (keg), bones, brick, car trucks, car wheels, casting, cord wood, cotton seed, cotton seed products, fertilizers, grease, hides, ice, iron (sheet) iron pipe, lumber (except shingles and shooks in bundles), musical instruments——

Commissioner Prouty: Well, that is enough. You may file that.

(A paper offered in evidence, marked Defendants' Exhibit Number 1, Witness Leeds, received in evidence March 25, 1910, and same is attached hereto.)

Mr. Leeds: There is another feature however, that I would
603 like to state right here, because it comes in in this connection. It frequently happens—speaking of our westbound loaded cars, that an order is sent out along the line that no cars shall be held for a load for longer than twenty-four hours; and sometimes

there is an order sent out that they cannot be held for an order at all, that they must be picked up and sent empty in order to keep up the supply. That is done I think, probably we have no season which passes through without some little period in it, that both of those orders will be in effect.

Mr. Norton: Does any season occur when the railroad company does not have to haul ice from one supply station to another?

Mr. Leeds: We have not had any season——

Commissioner Prouty: He has already gone pretty fully into that.

Mr. Norton: I am not going into that beyond that question.

Commissioner Prouty: We are assuming that you manage this thing as economically as you can.

Mr. Norton: That was the only question I wanted to put on that point. He spoke of one season and I want to know if it is characteristic of the seasons, that more or less hauling must be done from place to place to meet the demand.

Mr. Leeds: Of course we are endeavoring to put ourselves
604 in shape to avoid that as much as possible and every year finds us perhaps in a little better shape.

Mr. Norton: That is all for me.

Commissioner Prouty: Mr. Durbrow do you desire to ask any questions?

Mr. Durbrow: No thank you.

Redirect examination:

Mr. Call: I desire to examine him on some points which were not covered in our direct examination. What is the average mileage of your equipment?

Mr. Leeds: Per year?

Mr. Call: Per day.

Mr. Leeds: Well covering a year's business, our—I can give you that exact I think (referring to papers); no, I have not got it here; but approximately 55 miles.

Mr. Call: That included the loaded and unloaded cars?

Mr. Leeds: All miles traveled.

Mr. Call: All miles traveled by each car?

Mr. Leeds: Yes, sir.

Mr. Call: An average for each car?

Mr. Leeds: Yes.

Mr. Call: Do you know what your loaded mileage is?

605 Mr. Leeds: No, I do not get it reported in that way.

Mr. Call: Do you know what your total loaded mileage is for the year?

Mr. Leeds: No.

Mr. Call: Do you know what your total income is for loaded mileage?

Mr. Leeds: Yes.

Mr. Call: How much is that?

Mr. Leeds: That is covered in the balance sheet he has for 1909.

Mr. Call: And your average rate is covered in there so we can ascertain that fact?

Mr. Leeds: Well, there is no rate named in there but I have testified to that.

Mr. Call: You have testified as to your average rate?

Mr. Leeds. Yes.

Mr. Call: So your loaded mileage can be ascertained from that by division?

Mr. Leeds: Yes, and I can give you if so desired the total miles made, as far as that goes, too.

Mr. Call: We can get that. You can give that.

Mr. Leeds: I can give that to you any time you want it.

606 Mr. Call: How does that average mileage compare in your equipment with the ordinary equipment?

Mr. Leeds: I am unable to tell you.

Mr. Call: You have not made——

Mr. Leeds: I don't know.

Mr. Call: You have about six thousand cars, have you not?

Mr. Leeds: Yes, we will have a little more than that. We have a new series of cars coming on now that will increase that up to probably 6500 maybe.

Mr. Call: Upon what considerations do you base your conclusion that this rate is a reasonable rate?

Mr. Leeds: Well I have had a good deal of experience from time to time in the making of freight rates and I presume that we arrive at a good many of those conclusions as to the value of the service to the party for whom we perform it and competitive reasons and comparative reasons.

Mr. Call: Well just name now what you take into consideration when you say that is a reasonable rate.

Mr. Leeds: I have just named the things I would take into account if I were going to analyze a freight rate.

Mr. Call: Just name now in detail if you will——

Mr. Leeds: Well, I have named them.

607 Mr. Call: You have given some very general conclusions there as to competitive conditions.

Mr. Leeds: Yes,——

Mr. Call: But I want to know what you take into consideration. If you know, I want to know what you base your conclusion on that it is a reasonable rate. Do you just guess at it or do you take something into consideration, and if so, what?

Mr. Leeds: Oh no I did not make the rate and it was not guessed at by the parties who did make it.

Mr. Call: Counsel have asked you to say if you thought it was a reasonable rate.

Mr. Leeds: It was made I think by consultation with parties with whom the rate was made and parties who are responsible for the rate are better qualified to testify about it than I am.

Mr. Call: I know, but they asked you to do it and I supposed you had some reason for stating it was reasonable.

Mr. Leeds: I said it was my judgment that the rate is reasonable.

Mr. Call: For instance what did you compare it with? You say by comparison is one way. What do you compare it with?

608 Mr. Leeds: Well sir if you were to make a comparison with other rates from other parts of this country on citrus fruit I think you would find the rate is even lower by comparison.

Mr. Call: Name some rates you have compared it with in your own mind when you said you thought it was reasonable?

Mr. Leeds: I don't know——

Commissioner Prouty: It looks a little bit unfair not to allow you to cross examine him along this line, but we have heard this kind of cross examination so often that we know it does not assist the Commission any and it will not assist you any. You will not get any light.

Mr. Call: Well it looks that way, but I did not know it before, your Honor.

Commissioner Prouty: And at the same time Mr. Leeds' judgment may be of value.

Mr. Call: It may be entitled to some consideration. Do you know what the apple rate is from the Pacific coast to the eastern markets?

Mr. Leeds: Do you mean the transportation apple rate?

Mr. Call: I mean the transportation apple rate.

Mr. Leeds: No, I do not.

Mr. Call: Do you know what the vegetable rate is?

609 Mr. Leeds: I think the rate on vegetables is a graduated rate, but I am not able to give you the different phases.

Mr. Call: Do you know what the rate on celery is?

Mr. Leeds: Not altogether.

Mr. Call: Do you know what the rate on cantaloupes is?

Mr. Leeds: I do not.

Mr. Call: Do you know what the rate on beer and wine is?

Mr. Leeds: I do not know the freight rate.

Mr. Call: I guess I will pass that point. Mr. Leeds, you said that the Santa Fe had pursued some experiments in the way of precooling with a man by the name of Sprague?

Mr. Leeds: Yes, sir.

Mr. Call: That was a considerable time after Mr. Powell had made his investigation and given out his results, was it not?

Mr. Leeds: No, it was a long time before that.

Mr. Call: What?

Mr. Leeds: It was a long time before that.

Mr. Call: When was it?

Mr. Leeds: My recollection is that it was about six or seven years ago. The first experiments which were made were made I believe in the San Joaquin Valley with some deciduous fruit. Then they came down here and had a little plant out at Arlington

610 Heights.

Mr. Call: But you had never carried it to any conclusion with Sprague so as to lead you to any different processes or arrangements?

Mr. Leeds: Well I believed at that time and I have never changed my mind since, that we would eventually develop the process into a valuable proposition for handling perishable fruits.

Mr. Call: You have come to the conclusion that is the only way to handle it, have you?

Mr. Leeds: I have always believed we would develop into that, yes, sir.

Mr. Call: And the considerations that led you to that conclusion are about the same considerations that have been recited here by the shippers, are they not?

Mr. Leeds: Yes, I should say so; they generally, wherever we have had any pre-cooling stuff that was properly handled, the shippers generally admitted some benefit from the pre-cooling.

Mr. Call: You have this plant in process of erection at San Bernardino?

Mr. Leeds: Yes, sir; it is about complete.

611 Mr. Call: And you say the shippers wanted you to put up a new plant; that is that was the result of a conference with Mr. Ripley, was it?

Mr. Leeds: I did not attend that meeting. I testified from the report that was made to me of that meeting yes.

Mr. Call: That was your understanding, was it, but during that discussion there was nothing said about any four hour process for pre-cooling fruit, was there?

Mr. Leeds: Not having been there I do not know what discussion took place.

Mr. Call: There was no discussion——

Mr. Leeds: You can learn that from those who were present.

Mr. Call: So far as you know there was no discussion with regard to adding a pre-cooling charge onto the refrigeration charge, was there?

Mr. Leeds: What do you mean?

Mr. Call: I mean adding the pre-cooling expense up here at San Bernardino on top of your refrigeration charge.

Mr. Leeds: We are not adding it on top of that.

Mr. Call: I understood your proposition was to add the pre-cooling expense to the refrigeration charge.

Mr. Leeds: Oh, no.

612 Mr. Call: What do you pre-cool and refrigerate for?

Mr. Leeds: It is our purpose to begin this thing, the carrying of that stuff on what has been known as our standard refrigeration rate including the pre-cooling.

Mr. Call: Including the pre-cooling?

Mr. Leeds: Yes, sir.

Mr. Call: That is, you pre-cool and refrigerate for the refrigeration rate, that is your idea?

Mr. Leeds: Yes, sir.

Mr. Call: Is that the tariff?

Mr. Leeds: I do not think our tariff is in effect yet but I think it will be the tariff.

Mr. Call: That will be the tariff?

Mr. Leeds: Yes, as far as I know now, unless there is an opportunity to change.

Mr. Call: Do you know what your capacity is there?

Mr. Leeds: Yes, the intended capacity is to pre-cool, including time consumed in switching and so forth, about 128 cars a day if necessary.

Mr. Call: And how many at one time?

Mr. Leeds: 32.

Mr. Call: 32 at one time, that would be 128 in 24 hours?

613 Mr. Leeds: Yes.

Mr. Call: And 32 at one time; that would be about five or six hours?

Mr. Leeds: Well——

Commissioner Prouty: Do you cool the fruit in the car or remove it from the car?

Mr. Leeds: In the car.

Mr. Call: And what is the temperature of the cold blast you put through the car?

Mr. Leeds: You can put it through there at any temperature you choose to make it, as low as necessary.

Mr. Call: You have experimented with that, have you?

Mr. Leeds: It has been; it has been worked out.

Mr. Call: It does not freeze the oranges?

Mr. Leeds: We have not experimented with that plant because it has not been in operation.

Mr. Call: But have you experimented with this process?

Mr. Leeds: To a certain extent, yes, sir.

Mr. Call: And where?

Mr. Leeds: With an inferior machine and small plant at San Bernardino.

Mr. Call: Do you find you can put on there a temperature

614 that will cool the oranges to the middle of the box?

Mr. Leeds: Yes.

Mr. Call: Down to 33 degrees?

Mr. Leeds: No, I do not think it will go down to 33 and I do not believe you put it down to 33 either.

Mr. Call: You do not think you can put it down to 33 degrees?

Mr. Leeds: I can put it down, I can freeze it.

Mr. Call: I know, that is just what we want to avoid.

Commissioner Prouty: Is it worth while to take up time as to what that particular plan will or will not do?

Mr. Call: Perhaps not. I wanted to get in a general way the idea as to the capacity.

Commissioner Prouty: He has already stated the capacity, and has already stated that he proposes to cool the fruit in the car and proposes to do it in about five or six hours.

Mr. Leeds. We intend that the operation itself will occupy about four hours. We might put in one more turn by quicker switching.

Mr. Call: I believe you said that the westbound refrigeration rate was controlled largely by competition?

Mr. Leeds: Yes. I have not anything to do with that.

Mr. Call: You do not fix that rate?

615 Mr. Leeds: I do not.

Mr. Call: Well do you fix any rates?

Mr. Leeds: Well I expect a good many of the rates are made upon my recommendation.

Mr. Call: Yes, but who makes them?

Mr. Leeds: The Atchison, Topeka & Santa Fe Railroad Company.

Mr. Call: What man in the road makes them?

Mr. Leeds: Well they have got a traffic bureau.

Mr. Call: Do you know who runs it?

Mr. Leeds: I don't know; Mr. Chambers can tell you who operates that tariff bureau. I don't know.

Mr. Call: Well they make these rates for you, do they? Chambers makes the rates for you?

Mr. Leeds: The rates are made I suppose in sort of a family conference and they are sometimes made by one party and sometimes by another, according to the exigencies of the case, you know.

Mr. Call: We have just a vague idea of the process?

Mr. Leeds: I suppose you have.

Mr. Call: Now you do not make any of your ice contracts either?

Mr. Leeds: No.

616 Mr. Call: They are made for you. Who determines——

Mr. Leeds: No they are not made for me, they are made for the Atchison Road.

Commissioner Prouty: Mr. Leeds has gone into that fully, Mr. Call.

Mr. Call: The competition then or rather the fact that there is no competition on eastbound refrigeration is one of the factors that has resulted in the present refrigeration rate as compared with the westbound rate?

Mr. Leeds: What do you mean?

Mr. Call: The fact of the absence of competition is one of the large factors?

Mr. Leeds: No, I do not think that has anything to do with it. As a matter of fact——

Mr. Call: You say it does the other way.

Mr. Leeds: All of the refrigeration rates I know anything about where there is competition are higher than they are here.

Mr. Call: How does it come that that westbound refrigeration rate is kept down so low on account of competition?

Mr. Leeds: That was fixed a long time ago. I don't know how.

Mr. Call: I thought you said competition drove it down?

617 Mr. Leeds: I think it did.

Mr. Call: Would it not be a good thing for us to have a little competition on this end?

Mr. Leeds: If you could get that kind, yes.

Mr. Call: If we get some competition here it might be a good thing for us.

Mr. Leeds: It might and it might be bad for you if there were more.

Mr. Call: What?

Mr. Leeds: They would have to raise the rate.

Mr. Call: You perform here, you might say, a service in furnish-

ing these cars to the citrus fruit traffic, both ventilated and refrigerated, in furnishing this equipment?

Mr. Leeds: Yes, sir.

Mr. Call: Now, on what theory as a railroad man would you justify any greater charge to the refrigeration shipper, one who ships under refrigeration, than to the ventilated shipment, over and above the actual cost of the increase in service?

Mr. Norton: We refer you to the decision of the Supreme Court of the United States in the St. Louis Hay case for that. That
618 is well settled. We do not have to furnish anything at the cost to us.

Commissioner Prouty: He has already given his view in that matter, Mr. Call. Whether his view is worthy of acceptance is probably a matter of argument; but he says that they must furnish a ventilated car and a refrigerator car, and it is cheaper for his company to furnish a refrigerator car for ventilated service than it is to provide two kinds of equipment. That is his position, and that therefore when he furnishes you a refrigerator car he may properly charge for the difference in equipment, although he could not properly do it when he furnishes the ventilated car. Now whether that is a valid proposition or not is a matter of argument.

Mr. Call: Yes.

Mr. Leeds: Well I take the ground that the refrigerator car——

Commissioner Prouty: You have already stated your position fully, Mr. Leeds.

Mr. Call: Now you said you took as the basis of your computation there a forty car train. Is that about a fair average citrus fruit train?

Mr. Leeds: No, I did not take it for that reason; of course
619 there are portions of the line and a good many portions of the line where forty cars are feasible. I took forty cars——

Commissioner Prouty: Never mind why you took it. He asked you simply whether that is your average citrus fruit train.

Mr. Leeds: No.

Commissioner Prouty: What is it?

Mr. Leeds: I guess 35 cars.

Mr. Call: You think that on an average right through on the Santa Fe line that would be the average?

Mr. Leeds: I think that is, of course we do not get that many cars all the way through, but that would be an average train.

Mr. Call: And at certain places you carry 50 and 60 do you not?

Mr. Leeds: Well, at certain places we carry a good many less than that of citrus fruit, you understand.

Commissioner Prouty: Does one locomotive haul the train all the way, 35 cars?

Mr. Leeds: No, sir, there are a good many pusher grades on the line where it takes from two to three engines.

Commissioner Prouty: Yes, and there are a good many places where one will haul more than 35?

620 Mr. Leeds: Yes.

Commissioner Prouty: But in your judgment could one

locomotive on the average haul 35 cars of oranges between here and Chicago?

Mr. Leeds: I do not think I am competent to give expert testimony on that.

Commissioner Prouty: Very likely not. We ought to have some operating man.

Mr. Norton: It takes three out of San Bernardino.

Commissioner Prouty. Yes there might be short stretches where it would take more.

Mr. Call: There is one question which this witness can answer better than any other with regard to these new collapsible bunker cars. Do you see any objection to their use to their full length on a ventilated shipment, that is from the standpoint of the protection to the fruit?

Mr. Leeds: I do not think after we have developed a proper ventilator, if we have not got it; I don't know whether we have yet or not because I have not had commercial experience enough to know; but with the application of the proper ventilator on the car I do not see that there need be any——

Mr. Call: Do you see any objection now to their use from
621 the standpoint of protection to the fruit to the full length of the car six wide and two high?

Mr. Leeds: I think we can protect your fruit all right if loaded that way.

Mr. Call: And there is no reason that you can now think of why it could not be just as well protected as in a shorter load?

Mr. Leeds: We intend to make it successful in that way.

Mr. Call: And the only objection you see to it would be the mechanical labor of raising and lowering the gates?

Mr. Leeds: There may be the further objection that the shippers will not desire to load, you understand——

Mr. Call: Have you tried to discourage them or encourage them to load?

Mr. Leeds: I think I have endeavored to encourage them to load, from the fact that we have ordered several hundred new cars of this description.

Mr. Call: Who was it that sent a man around to discourage us from loading the full length?

Mr. Leeds: Not I.

Mr. Call: You did not do it?

Mr. Leeds: No.

Mr. Call: So far as you know——

622 Mr. Leeds: If you will let me answer one question before you put another——

Mr. Call: You have fully answered that question.

Commissioner Prouty: I think you have fully answered that. We have not time for discussion.

Mr. Leeds: I have ordered those cars.

Commissioner Prouty: You have answered those questions.

Mr. Call: That is all.

Mr. Norton: One question I forgot to put. You have over the transcontinental lines as well as over the eastern lines of your sys-

tem a great deal of refrigeration to do outside of this citrus fruit refrigeration?

Mr. Leeds: Yes.

Mr. Norton: So it would be necessary for you to maintain these refrigerating plants even if you did not refrigerate the citrus fruit at all, or many of them?

Mr. Leeds: We must necessarily maintain facilities along the road.

Mr. Norton: That is all.

(Witness excused.)

Mr. Matthews: There is one of the stockholders of this Argentine plant——

623 Commissioner Prouty: What do you mean?

Mr. Matthews: The Argentine Icing Plant, Mr. Harry Duffield is one of the stockholders and I want to get from him if I can the exact amount paid by the Santa Fe for ice. The contract only shows a certain figure and it changes with the price of the coal.

Commissioner Prouty: It figures from $2.25 to $2.50 per ton.

Mr. Matthews: The contract so provides and there is a sliding price in the case of the coal.

Commissioner Prouty: If the change is only 15 or 25 cents a ton I do not think it is material.

Mr. Call: You asked to have Mr. Leffingwell here. He is here and perhaps would not want to stay over night.

Mr. Norton: I do not think we will want to examine him now.

J. S. EDWARDS recalled.

Mr. Matthews: You have for a number of years investigated refrigeration matters along the line of the Santa Fe Road, have you not?

Mr. Edwards: I have.

Mr. Matthews: You have visited the icing stations and got all the information you could on that subject?

Mr. Edwards: I visited all the icing stations I think along

624 the Belen route except the Winona, which I was informed was an exact counterpart of the Clovis plant, and I have information through an assistant. I also visited the Las Vegas plant——

Mr. Matthews: Do not go into detail. You have been around all the icing stations and are posted——

Mr. Edwards: There are one or two I have not visited. That is the point I wanted to bring out.

Mr. Matthews: In the spring of 1908 tests were made on 80 cars shipped by the California Fruit Growers Exchange to Chicago as to what quantity of ice was used at each icing station along the road, were there not?

Mr. Edwards: There were.

Mr. Matthews: Will you please explain the method in which those tests were made?

Mr. Edwards: In the first place as before stated the California Fruit Growers Exchange maintain inspectors at the principal icing stations along the line between Los Angeles and Chicago. At this time, of date March 31, 1908, a letter of instruction was sent to the inspectors. The man at The Needles—a blank was prepared and forwarded, and the man at San Bernardino was instructed to select five cars at random——

Mr. Matthews: Each week?

625 Mr. Edwards: Each week, that were going past Kansas City to Chicago, and he was instructed then to note specifically the amount of ice put in each of these five cars and having noted it on a blank, which was furnished from the Los Angeles office, the blank was forwarded by mail to the next icing station and the inspector there was instructed to do the same, noting particularly the amount of ice put in at the second station, being The Needles. The Needles man would then forward by mail the same statement to Winslow and the Winslow man would make a similar observation and record and sign his name to the record and pass it on to Las Vegas, where the same process was repeated and forwarded to Argentine and at Argentine the same thing occurred, making the record complete to Chicago, each having signed his name; and the record was returned to the Los Angeles office. This was repeated during the months of April, May, June and July.

Mr. Norton: Of what year?

Mr. Matthews: Of 1908. Upon how many of the eighty cars did you obtain a complete record?

Mr. Edwards: Some of the cars which were destined to Chicago were sold or diverted en route and others for some reason there was an error; in one case there were five cars that did not

626 arrive on account of the high water, and for one reason and another the thing was reduced to forty-six cars, I believe, that we had a complete record of in this way.

Mr. Matthews: What does that record show in substance?

Mr. Edwards: I have made a summary and compilation of the results——

Mr. Norton: First, if you will permit the interruption, forty-six cars went how far?

Mr. Matthews: All went to Chicago.

Mr. Edwards: Not necessarily to Chicago. Beyond Argentine and to various points east of Argentine, Chicago, included.

Mr. Norton: And you followed them to destination, did you?

Mr. Edwards: No, we only followed them to Argentine.

Mr. Matthews: That record shows the car number, the temperature and the amount of ice put in it at each station, does it not?

Mr. Edwards: Yes, the record shows just those things.

Mr. Matthews: When was the first car shipped, what week?

Mr. Edwards: April 7, 1908.

Mr. Matthews: And the last?

Mr. Edwards: July 29th, I think. July 29th.

Mr. Matthews: Have you ascertained the average quan-

627 tity of ice used at each of these stations on all those cars by the month?

Mr. Edwards: We have done so.

Mr. Matthews: That appears on that statement?

Mr. Edwards: It appears on a tabulation which I have.

Mr. Matthews: Do you know the number of cars shipped over the Santa Fe road, consigned to the California Fruit Growers Exchange during the year 1908 and have you ascertained the average quantity of ice you used on each of those cars during each month of that year?

Mr. Edwards: I have.

Mr. Matthews: How have you done that?

Mr. Edwards: That takes all the months of 1908?

Mr. Matthews: Yes. We will show that.

Mr. Edwards: Having obtained the amount of ice for each of these cars shipped during each of these——

Commissioner Prouty: Have you made any investigation except as to forty-six of these cars?

Mr. Edwards: Yes, I have carried it on through for the whole season, for all the shipments.

Mr. Matthews: We will follow that up in just a minute.

Mr. Norton: Can you give us at the proper time copies of
628 his statement?

Mr. Matthews: Yes. You will be furnished with copies of everything, car numbers and everything. Go ahead.

Mr. Edwards: Please repeat the question.

Mr. Matthews: How did you arrive at that average?

Mr. Edwards: Having found what the average amount of ice put in each of the cars at each of the icing stations on an average in a given month——

Commissioner Prouty: Talk now about these forty-six cars.

Mr. Edwards: I am confused as to what is the question.

Commissioner Prouty: The only cars you have testified to so far were the forty-six cars which went through.

Mr. Edwards: If that is what you want to follow, the observation was made by these agents or inspectors and recorded and all we had to do was to add together the amounts of the several cars for a given month at a given station and divide it by the number of cars, which gave the amount, the average amount of ice for that month at that station.

Commissioner Prouty: But you assume the quantity used to be the same as you found to be used in icing the forty-six cars?

Mr. Edwards: You are asking only of the forty-six cars now?

Commissioner Prouty: Just tell us how much ice was used
629 in those forty-six cars.

Mr. Edwards: Unforunately my stenographer was to have the record here and it has not come in. It should be here and I presume it will be here in just a minute.

Mr. Matthews: Mr. Edwards has the average amount of ice used at each station on each of those cars and has multiplied that by the number of cars shipped in that month.

Commissioner Prouty: That is what I thought, but the only actual observation was made as to those forty-six cars. If he will

tell us the actual result that will be just as good as if he multiplied the number of cars which were shipped. What we want to know is how much ice was put into each one of those cars at each station.

Mr. Edwards: I have it absolutely accurate, but as I say there is—here I have it.

Commissioner Prouty: I may say as to this subject, when the Commission had this question of refrigeration under consideration before in the old case, we sent our inspectors out and ascertained the quantity of ice actually used to some extent on these California shipments. I am not certain to how great an extent. We subsequently sent out inspectors in the South to ascertain with
630 respect to all the strawberry shipments for a season from North and South Carolina, the quantity of ice actually used in the refrigeration. We did the same thing as to peach shipments from Georgia. I imagine that before we decide this question we shall do the same thing again with respect to these shipments, and it will be hardly worth while to take up any great amount of time on either side in showing from the reports of your officers or inspectors how much ice has been used. Of course we will be glad to have this statement put in and the Defendants can put in any statements they desire, but I think the Commission will desire for its own information in deciding this question——

Mr. Matthews: We will put it in for what it is worth. We have some more along the same line covering two hundred cars for the season.

Mr. Edwards: I am now prepared with the exact figures for the month of April at San Bernardino——

Mr. Matthews: Perhaps it is hardly worth while to go through each station. You have a statement and can file it. You might read the total amounts, average amount put into each car.

Mr. Norton: Naming how many stations they were iced at?

Commissioner Prouty: The statement shows that.

Mr. Edwards: The average for the four months for all
631 stations was 19,399 pounds.

Commissioner Prouty: That is per car?

Mr. Edwards: Per car, 9 tons and a little less than a half.

Commissioner Prouty: That is for the four months?

Mr. Edwards: That is for the four months?

Mr. Norton: That is an actual test for all cars for that month or an average?

Commissioner Prouty: No, he has told you it is the actual result from these forty-six cars. Now, Mr. Norton, your witness says that it takes 16 tons. There is a difference of about 100 per cent, and it must show you and must convince everybody that the Commission would be entirely at sea if it relied on the testimony given here. For that reason I think we shall want to ascertain just exactly how much ice is used in this service.

Mr. Norton: This you understand does not go to Chicago.

Commissioner Prouty: No.

Mr. Matthews: We are going into that.

Commissioner Prouty: There would be one more icing, providing the car was iced at Chicago.

Mr. Norton: And there might be a couple of icings beyond Chicago to New York.

Commissioner Prouty: We are not talking of New York
632 but of Chicago.

Mr. Edwards: I think I can answer that in just a moment by the figures.

Commissioner Prouty: Have you before you there the initial icing at San Bernardino.

Mr. Edwards: The average?

Commissioner Prouty: Yes, the average.

Mr. Edwards: A little under 9,000 pounds.

Mr. Matthews: There were two cars, one 8,500 and the other 9,000?

Mr. Edwards: Yes.

Commissioner Prouty: And about 10,000 pounds was added afterwards?

Mr. Edwards: Yes.

Mr. Norton: That is what I was getting at. You said he had given the actual results.

Mr. Matthews: We can give you the forty-six cars in detail, the average and total average.

Commissioner Prouty: You may file a statement showing each one of these cars, and I understand that you have the date and car number and amount of ice that was put into the car at each station included. You may file that statement.

633 Mr. Matthews: That is already prepared.

Mr. Norton: Does that include the Argentine icing?

Mr. Matthews: Yes.

Mr. Norton: And the San Bernardino icing?

Mr. Matthews: Yes.

Mr. Edwards: Let me make a statement here. This includes all the ice put in, including San Bernardino and Argentine. Let me add one more thing, if you please. The shrinkage between Winslow and Las Vegas, that is the amount of ice put in at Las Vegas, the average amount is 2,175 pounds. Now the distance from Las Vegas to Winslow is almost exactly the distance from Kansas City to Chicago, hence the shrinkage would practically be 2200 pounds or a little over a ton. Now as the bunkers are full at Argentine and hold 4½ tons, they will under normal conditions arrive at Chicago with 3½ tons, which will call for no re-icing.

Mr. Matthews: Do you know the conditions in Chicago, do they actually re-ice at Chicago without extra charge?

Mr. Edwards: We have no evidence of it.

Mr. Matthews: During these four months covered by these forty-six cars, how many cars were shipped by the Exchange as compared with the total number?

634 Mr. Edwards: Under refrigeration?

Mr. Matthews: Yes. I think your statement shows 4,028 cars shipped in that season.

Mr. Edwards: About three-quarters of the whole shipment.

Mr. Matthews: So these cover 75 per cent of the iced shipments over the Santa Fe during that year?

Mr. Edwards: Yes, sir.

Mr. Matthews: Have you tested the accuracy of those reports in any way?

Mr. Edwards: We made comparison with the passing reports which are turned in daily by our inspectors all along the line.

Mr. Matthews: Turned in where?

Mr. Edwards: Turned in to the Los Angeles office.

Mr. Matthews: That is, the inspectors at the station make a report called a passing report showing the quantity of ice put in?

Commissioner Prouty: That simply shows the cars were there on that day.

Mr. Edwards: And the amount of ice, the temperature of the car and what time it arrived.

Commissioner Prouty: Do your inspectors make a report to you showing the temperature of the car at each station?

635 Mr. Edwards: The temperature of the outside air, and in case of ventilated shipments, there is also a record made of the temperature inside the car.

Commissioner Prouty: Do your inspectors report to you whether a car is iced at a particular station?

Mr. Edwards: They do.

Commissioner Prouty: Do they undertake to show the quantity of ice put in the car?

Mr. Edwards: They do, but not that they observe each car. They are obliged to take the icing company's record in many instances.

Commissioner Prouty: Would they show the quantity of ice put into a train load?

Mr. Edwards: By summing the cars together; they report every car that passes on that date and the amount of icing.

Mr. Matthews: Have you compiled any of the cars shipped by the California Fruit Growers Association in 1908, and if so, what does that cover?

Mr. Edwards: We took 210 cars that went to Chicago and made a comparison in the same way from the ordinary records of the office.

Mr. Matthews: Does that cover every month when the

636 icing is done?

Mr. Edwards: It does not cover October and November; there is very little if anything done in those months.

Mr. Matthews: What is that average for the whole season, from March, including September?

Mr. Edwards: 19,057 pounds.

Mr. Matthews: What is your average for the four months?

Mr. Edwards: 19,399 pounds.

Mr. Matthews: So the season average is below this?

Mr. Edwards: The season average is below this.

Commissioner Prouty: You may file that statement.

(A paper offered in evidence, marked Complainants' Exhibit Number 23, Witness Edwards, received in evidence March 25, 1910, and the same is attached hereto.)

Mr. Norton: By the season average, does that mean the entire year except October and November?

Mr. Edwards: January and February are not included because there is really no icing in those months, or so little it was not figured.

Mr. Norton: Or December?

Mr. Edwards: None figured in this statement.

Commissioner Prouty: October, November, December,
637 January and February?

Mr. Edwards: It includes October, but omits November, December, January and February.

Mr. Matthews: I think that is all.

Cross-examination:

Mr. Norton: I was going to ask how he got at the weight, but that has been brought out I think. You get your records of the weights from the ice companies?

Mr. Edwards: Not in all cases. Most of the ice goes in in three hundred pound cakes and the regular records are more or less irregular or more or less indefinite because they take them from the railroad records, but in these cases the inspector was instructed to note carefully, and he simply counted the number of three hundred pound cakes.

Mr. Matthews: Have you figured the cost based on Mr. Leeds' figures of the icing of a car to Chicago?

Commissioner Prouty: No we can do that. That seems to be all.

Mr. Durbrow: How many inspectors did you have at these different icing points?

Mr. Edwards: Do you want me to enumerate them?

Commissioner Prouty: No, how many inspectors did you
638 have at the different stations?

Mr. Edwards: Only one at a station.

Mr. Durbrow: These forty-six cars you speak of, did they move in train lots?

Mr. Edwards: Sometimes they would be in one train and sometimes in two sections.

Mr. Durbrow: But you kept a record of so many cars and it finally dwindled down to forty-six?

Mr. Edwards: Yes.

Mr. Durbrow: I was trying to determine whether they moved forward in one train?

Mr. Edwards: No, five each week.

Mr. Durbrow: You took five of the cars which were sent forward each week by particular numbers?

Mr. Edwards: Yes.

Commissioner Prouty: Have you some other witness?

Mr. Call: I have tabulated the information required by counsel

for the Defendants with regard to the selling price of oranges at each of the different points named during the years 1908 and 1909 by months and we will now produce it and offer it.

(A paper offered in evidence, marked Complainants' Ex-
639 hibit Number 24, received in evidence March 25, 1910, and same is attached hereto.)

Mr. Edwards: It covers only two years.

Mr. Call: It covers the two years which you asked for, 1908 and 1909. We have already furnished a report for ten years.

Mr. Norton: We have already one of these reports for lemons?

Mr. Call: You already have that, yes. We also have here the contract which you asked for with the Los Angeles Ice & Cold Storage Company in the form of correspondence, which we will now produce and offer as our exhibit with respect to the pre-cooling and pre-icing at Los Angeles.

(A paper offered in evidence, marked Complainants' Exhibit Number 25, received in evidence March 25, 1910, and same is attached hereto.)

Mr. Call: Now if it please the Commission we would like to offer an extract which we have copied from the answer of the Atchison, Topeka & Santa Fe in our injunction case, which we brought to restrain this lemon rate. It is a very voluminous document covering forty or fifty pages and to avoid encumbering the record we have copied that portion of the answer that we desire to offer and
640 will offer it now subject to examination by counsel. It has a bearing upon the items and elements and considerations which the railway companies deem enter into the making of the rate itself.

Commissioner Prouty: You may file that as an admission by the Santa Fe.

(A paper offered in evidence, marked Complainants' Exhibit Number 26, received in evidence March 25, 1910, and same is hereto attached.)

Mr. Call: Also at this time we desire to offer the information furnished by the Defendants at our request as follows: first, a tabulation addressed to Mr. Barnwell and signed by R. J. Abbott, dated March 21, 1910, showing the citrus fruit shipped to eastern territory, oranges and lemons, under ventilation and refrigeration.

(A paper offered in evidence, marked Complainants' Exhibit Number 27, received in evidence March 25, 1910, and same is hereto attached.)

Mr. Call: Also a tabulation showing the general acounts, operating expenses of the Santa Fe from July 1, 1900 to June 1, 1909 furnished by the statistical department of the railway company.

(A paper offered in evidence, marked Complainants' Ex-
641 hibit Number 28, received in evidence March 25, 1910, and same is attached hereto.)

Mr. Call: Also as our exhibit a statement showing the division of citrus fruit rates to various points named furnished by the same department.

(A paper offered in evidence, marked Complainants' Exhibit Number 29, received in evidence March 25, 1910, and same is attached hereto.)

Mr. Call: Also a statement showing gross freight and passenger earnings on the Santa Fe System from July 1, 1900 to June 30, 1909, from the same department.

(A paper offered in evidence, marked Complainants' Exhibit Number 30, received in evidence March 25, 1910, and same is attached hereto.)

Mr. Call: We also desire to offer a letter or a portion of a letter written by President F. P. Ripley of the Santa Fe Railway to Mr. Story President of the Fruit Growers Exchange, dated November 23, 1905. I do not care to use all of this letter and will let counsel examine the signatures to see if he recognizes the signature.

Mr. Norton: We will take your word for it (after examining letter).

642 Mr. Call: I desire to read from that. I do not care to encumber the record with the whole letter, but that portion of it which I care particularly about reading has reference to his view of what should be done with the charge for carrying ice. It appears on Page 5 of the letter and is as follows:

"Fourth. You ask for a reduction in icing charges, or in lieu thereof, permission to the shipper to do his own icing. I have stated often, and again repeat, that our interest ceases with the transportation charges and that we do not care to make money out of the grower on icing charges. The large tonnage of ice which we must carry in the cars to preserve the fruit, adds greatly to our expense, of course, but it is or should be considered in making the rate itself, and we should not, and do not, attempt to get paid for it by a profit on the ice. As a matter of fact we are now icing at cost—in fact if we were to consider as a part of the cost of icing, the interest on cost of our ice houses, and the transportation of the ice, the account would, I believe, show a loss. Our refrigeration charges are based on the price we pay for ice not only for this purpose, but for our own purposes also."

Mr. Norton: That is Mr. Leeds' statement, that the ice goes

643 in at cost.

Mr. Call: Mr. Leeds' statement was that the carrying of the ice should be considered in the refrigeration.

Commissioner Prouty: We will not take time to discuss that now.

(A paper offered in evidence, marked Complainants' Exhibit Number 31, received in evidence March 25, 1910, and same is hereto attached.)

Mr. Call: I would like to offer as well a letter from Mr. Ripley dated June 17, 1907.

(A paper offered in evidence, marked Complainants' Exhibit

Number 32, received in evidence March 25, 1910, and same is hereto attached.)

(Complainants' Exhibit Number 32 is as follows:)

The Atchison, Topeka and Santa Fe Railway System.

(Letterhead.)

JUNE 17, 1907.

MY DEAR MR. STORY: Please recall the various interviews we have had in the last two years as to citrus fruit rates and the representations which have been made by your constituents and yourself as to the condition of the citrus industry, which finally resulted
644 in a reduction of the rate on oranges. This reduction was made at the earnest request of your Committee and yourself, based upon a prediction on your part that the season was likely to be disastrous for the growers, the same prediction having been made the previous year, and proving to be a great mistake as to both years. The question of now advancing the rate to the old basis has been under discussion in this office for the last two weeks and while it has been practically decided that we will let the orange rate stand as it is for the present, and probably for another season, I am writing to advise you that we do not consider the rate high enough and believe we made a mistake in reducing it last year. I stated to you last winter that it was reduced, not because we believed it too high in itself, but only because of the representations made as to the effect of a reduction on the industry. It now transpires that the growers would have had a very excellent year without this reduction and that the only effect of our act has been to take money from our treasury and put it into the pockets of some one, whether growers or consumers is undetermined. Up to this time the increase in the volume of tonnage has enabled the railroads to take care of the enormous expense of operation without seriously affecting their net revenue, but when we come to a general recession of business, which is about due to arrive, there will be only one course
645 left for us and that is to advance our rates, and in my judgment one of the first rates to be advanced will be the citrus fruit rate. I am writing this because I do not want you or your association to be deceived into believing that the controversy is settled, or that we have made up our minds that the reduction is to be permanent.

Yours truly,

E. R. RIPLEY.

Mr. F. Q. Story, Chairman, Citrus Protective League, 829 H. W. Hellman Building, Los Angeles, California."

Mr. Call: We also desire to offer a statement on our claim for reparation showing the shipments of pre-cooled and pre-iced fruit on which refrigeration charges were made. We will mark this as the Salt Lake Route claim.

(A paper offered in evidence, marked Complainants' Exhibit Number 33, received in evidence March 25, 1910, and same is hereto attached.)

Commissioner Prouty: Do those show the person who made the shipments?

Mr. Call: They are all from one party, these are all from one party, the Pomona plant. The San Antonio Fruit Exchange. That has no reference to claims for reparation of excessive charges
646 made on pre-cooled fruit.

Mr. Norton: Exhibit 33 is what?

Mr. Call: Those are shipments over the Salt Lake Road. This next exhibit is those over the Southern Pacific.

(A paper offered in evidence, marked Complainants' Exhibit Number 34, received in evidence March 25, 1910, and same is hereto attached.)

Mr. Norton: That is pre-cooled shipments?

Mr. Call: Pre-cooled and pre-iced shipments. The next is shipments over the Southern Pacific.

(A paper offered in evidence, marked Complainants' Exhibit Number 35, received in evidence March 25, 1910, and same is hereto attached.)

Mr. Call: And the next is for the San Pedro, Los Angeles & Salt Lake Road.

(A paper offered in evidence, marked Complainants' Exhibit Number 36, received in evidence March 25, 1910, and same is hereto attached.)

Mr. Call: Now we have in connection with that all of the billing——

Commissioner Prouty: You need not introduce that now. If the Commission decides you are entitled to reparation on ac-
647 count of those claims that amount will be determined later.

Mr. Call: I would like to inquire whether counsel for the Defendants desire any further proof that the exhibits I offered the first morning concerning our tabulations are correct or if the figures are conceded. Do you require explanation or proof of any point covered by our tabulations of the first day?

Mr. Halsted: There seems to be a discrepancy between the figures you show in your loss claim and ours. In your Exhibit Number 11 you show so far as the Salt Lake Company is concerned 287 claims paid amounting to $1,333.36. Our compilation shows 524 claims amounting to $2,124.00 for the same period.

Commissioner Prouty: Through the California Fruit Growers Exchange?

Mr. Halsted: Yes.

Mr. Call: I think it may perhaps be due to the fact that you have not segregated your shipments.

Mr. Halsted: We have.

Mr. Call: You have a record of just your claims paid during that year?

Mr. Halsted: No, sir; we have both claims filed and paid.

Commissioner Prouty: Are you talking about all the claims paid or simply to the California Fruit Growers?

648 Mr. Halsted: I am speaking now of the——

Mr. Call: Does your statement show for claims for cars that moved during that year, that started during that year?

Mr. Halsted: 1908-9, that season.

Mr. Call: That started during that year or the claims paid during that year?

Mr. Halsted: Paid.

Mr. Call: Ours is for the fruit shipped during that year.

Mr. Halsted: That may account for the discrepancy then.

Mr. Call: There is no objection then and we can consider our tabulations as in evidence.

Commissioner Prouty: I understand there is none.

Mr. J. H. Call: I suppose it is unnecessary for us to refer to the former decision of the Commission in the case of the Consolidated Forwarding Company and the Southern California Fruit Exchange against the Southern Pacific and others, which we would like to have considered.

Commissioner Prouty: It is not necessary for you to refer to the report of the Commissioner. If you desire to refer to the record upon which that report is based you may do that.

Mr. J. H. Call: We desire to refer only to the findings and report of the Commission contained in Volume 10 of the

649 Interstate Commerce Commission's Report.

Commissioner Prouty: Those are part of our record on file.

Mr. J. H. Call: We desire to refer to and ask to have considered by the Commission upon this hearing, the report of the Department of Commerce and Labor, Bureau of the Census, Bulletin Number 21, relating to the commercial value of railways in the United States and actual values of railways.

Commissioner Prouty: To what point is that?

Mr. J. H. Call: Upon the question as to the value of the railways of the United States. The Defendants here comprise practically all of the mileage of railways, and we have here a report made and published by the United States, by a bureau of the United States for the purpose of determining and reporting upon valuations, and in pursuance of that act they have made a report which I believe is admissible in the Courts generally and at common law, and we would like to refer to that report for what it is worth.

Commissioner Prouty: That report may perhaps be referred to but then the principal defendants in this case are the transcontinental lines, which handle this traffic up to the Missouri River or up to Chicago, and in fixing the rates we have to consider those lines mainly and not all roads in the United States.

650 Mr. J. H. Call: That of course is true, but we would like the benefit of that report as tending to show valuations of the different roads here which comprise the greater part of the mileage, and for what it is worth.

Commissioner Prouty: Is there any objection to that?

Mr. Norton: I think so, because there has been no definite and thorough examination as to the physical value made by the Government as I understand it yet. And I agree with the Commis-

sion that it is these initial roads which must be dealt with largely. It will appear from our testimony that the connecting lines never wanted to carry these rates and do not want to now and some of them will not and they are therefore the rates of the initial carriers, and I object generally because I do not like to get the record encumbered with some of these records so we do not know where we are at.

Mr. J. H. Call: This is the only official report as I am informed which has ever been made by the United States. It has been completed under Act of Congress and it is admissible under the common law for the purpose of showing the values of the roads named there.

Mr. Norton: That bulletin has been severely criticized for
651 its inaccuracy by persons competent to pass upon it and it will just involve us in a lot of controversies and disputes.

Commissioner Prouty: The report may be admissible, but I do not think it amounts to anything as showing the value of a railroad.

Mr. Durbrow: The only thing is, if this report is introduced in evidence it lays the foundation for an argument that these rates should be determined by taking into consideration the value of the roads. I have argued strenuously against that proposition and particularly in such a case as this. I do not see where it can serve any useful purpose except encumbering the record and requiring us to devote a larger space in our brief and argument to that point.

Commissioner Prouty: If the Complainants can do so they might show the value of your railroad, I think.

Mr. J. H. Call: That I understand is one of the disputable questions in every rate case, the value of the roads. A great deal of time was spent by the initial lines in the former cases——

Commissioner Prouty: You may offer that document and you can refer to it and renew your offer before the whole Commission and we will let the Commission determine after argument whether
that report should be admitted. I think it probably should
652 be admitted for what it is worth.

Mr. J. H. Call: I also desire to offer the sworn bill of complaint of the Atchison, Topeka & Santa Fe Railway Company in the case of the Atchison, Topeka & Santa Fe Railway Company against John R. Sullivan and others in the Circuit Court of the United States for the District of Colorado, setting forth the actual value of the lines of railroad of the Santa Fe in the State of Colorado and stating under oath that the actual value of those railroads does not exceed $25,000,000 per mile.

Mr. Norton: That was before the taxation board.

Mr. J. H. Call: It is in the Circuit Court of the United States, not for taxation purposes, but it states the actual value of the road.

Mr. Norton: Have you a copy of that?

Mr. Call: I have not a copy of it.

Mr. Norton: I wanted some reference and I suggest that he file that and refer to it without putting it in the record.

Commissioner Prouty: It seems to me you might extract such part of that as you desire.

Mr. Call: I will extract such parts as I desire and serve them on counsel.

Commissioner Prouty: It may be admitted as an admis-
653 sion for what it is worth. I understand you made that affidavit for taxation purposes, Mr. Norton?

Mr. Norton: I do not know anything about it. The reason I inquired is that property goes in in some of these western states at very much lower than the value.

Commissioner Prouty: Mr. Call states this is a statement by your company as to the actual value.

Mr. Norton: You will then file the extracts with the title of the case and not put the whole thing in?

Mr. Call: Yes, I will do so.

Mr. Halsted: I wish to hand you now the response of the Salt Lake Company to your demand for certain information as near as we could furnish it.

Commissioner Prouty: Is there anything further, gentlemen?

Mr. Call: I think there is nothing more at this time. There is some little statistical data which has not yet been furnished.

Commissioner Prouty: That concludes your case?

Mr. Call: That concludes our case in chief.

Mr. Norton: There was one of their witness- who we wish to reexamine on the Los Angeles ice contract, Mr. Woodford. He was to be brought back for that purpose.

Mr. Call: He is here.

654 Mr. Norton: And on our behalf as to those twelve or fifteen exhibits which were put in at the beginning of the case, we have looked those over and I presume in the main they are correct, but I would like to accept them with this qualification, that we may file any correction we may desire to.

Mr. Durbrow: I would like to join in that motion.

Commissioner Prouty: If they are not correct, you may show what the correct statement is.

Mr. Halsted: Yes, we may file contradictory statements if we find they are incorrect.

Mr. Norton: I find that my request for the prices f. o. b. California for oranges and lemons separately was for five years.

Commissioner Prouty: They stated it was impossible to give you those prices accurately for four or five years, but it could be done for two years.

Mr. Call: Yes, the Exchange itself has only recently adopted the plan of keeping them separately, but I gave them to you separately for all these various exchanges you asked for and I gave you the general exchange as far back as we have kept the books in that way.

655 B. A. WOODFORD recalled.

Commissioner Prouty: Perhaps right here we might as well consider the subsequent hearing of this case. How long do you anticipate, gentlemen, it will take you on the part of the defense?

Mr. Durbrow: I had hoped we might be able to conclude this case now. This is the situation. I am particularly anxious that your Honors should hear the evidence of the Defendants in this case. So far as the Southern Pacific Company is concerned, I think that the testimony of my witnesses will not consume more than a day, and I am allowing also for cross examination. Mr. Norton, I think, will take longer than that because he has some witnesses that are not available to the Southern Pacific on certain subjects. There are three cases set for San Francisco in which the Southern Pacific Company will make the defense. Those are set for Monday and Tuesday as I understand it, and I think they will require the two days to hear those cases. If we could have those two days here to conclude this case it would serve our convenience very greatly and I would like to introduce our case at this time if we could do it.

Commissioner Prouty: Could you not introduce your case
656 this afternoon and tomorrow, Mr. Durbrow, and then let Mr. Norton proceed to introduce his case in your absence, with the right on your part if you desire to introduce further testimony perhaps. It is a good ways from Washington here and we dislike to go back without hearing the cases assigned for hearing at San Francisco. We have an Examiner here and Mr. Lane himself will be in San Francisco too. If we could make some arrangements for a stenographer, which we probably could, we could perhaps continue this case here Monday and Tuesday and also hear the cases in San Francisco. Would it be necessary for you to be present personally at the hearing in San Francisco?

Mr. Durbrow: I think so. Both Mr. Herrin and Mr. Dunne are away and there is nobody else there who has ever handled any of these cases. In fact I have had charge of them for some time now. And so far as this case is concerned Mr. Norton has Mr. Chambers here as a witness, and Mr. Chambers is very familiar with the situation and I thought that the Southern Pacific would only supplement the testimony of the Santa Fe. That had been our intention because Mr. Luce has been ill and is now in San Francisco. He was formerly here when Mr. Chambers was here, in the early days, and I had planned to have our case follow the Santa Fe case, and
657 we had arranged that way, and I am not prepared to put my witnesses on the stand at the present time, and possibly if we have this afternoon and tomorrow and Monday, Mr. Norton, we might conclude this case?

Mr. Norton: I am afraid it would crowd us to do that. We could by Monday and Tuesday.

Commissioner Prouty: I could possibly stay here although it is at great inconvenience, Monday and Tuesday. I had expected to leave here tomorrow night and desired to do so, because I had agreed to be in Washington Friday night.

Mr. Norton: I do not want to be the means of your being put to

an inconvenience, but this is an extremely important case to us. We might try it in the East, but would prefer to try it right here where the Complainants have put in their case.

Mr. Durbrow: May I make this suggestion, that the Santa Fe proceed to put in their case today and tomorrow, and I could put my witnesses on Monday and arrive in San Francisco Tuesday, and Mr. Lane told me this morning that he thought he would not reach San Francisco until Monday afternoon or Tuesday.

Commissioner Prouty: Commissioner Lane will not be in San Francisco until Tuesday morning probably, but he can only be there a single day, he said, and it would not be sufficient I believe.

658 Mr. Durbrow: I will undertake to put in our defense in San Francisco in those three cases on the direct examination in two hours. That will crowd me considerably, but I am very glad to make that sacrifice for the reason that I would like to have this case proceed along the lines we had originally intended and outlined.

Commissioner Prouty: Well you may exercise your own pleasure as to the method of presenting the defense and we will go on as we are until Saturday evening and perhaps we may be able to make some definite determination tomorrow morning.

Mr. Durbrow: Well it will be understood that the case will be concluded at this hearing?

Commissioner Prouty: I will not say that now but tomorrow morning I will make some definite announcement as to that.

Mr. Norton: If you please, if it could not be concluded, we dislike to begin now unless we could have some assurance of its being concluded.

Commissioner Prouty: We will go on today and tomorrow anyhow.

Mr. Norton: If there should be a recess taken in the hearing, will the hearing be continued here in Los Angeles eventually?

Commissioner Prouty: Well that is uncertain. These rates

659 are under injunction and I suppose all parties are anxious to know where they stand.

Mr. Norton: And we are ready to try it now.

Commissioner Prouty: And the matter should be disposed of some way before we separate this summer. The personal engagements of some of the Commission are such that we should separate some time in June, and it would be necessary to argue it some time in May, if we settle it before the summer vacation. I do not suppose it would be possible for one of the Commissioners to attend here again this summer, and it would be necessary to take it before an Examiner.

Mr. Durbrow: I do not want to inconvenience your Honor, but I hope very much your Honor will endeavor to hear the testimony of the defendants personally. We would like to have this evidence heard by your Honor rather than have you read it at some future time and when your direct attention would not be given to this matter, and it is the wish of the defendants——

Commissioner Prouty: If I had not wanted to hear the testimony I should not have traveled three thousand miles.

Mr. Call: Why not do as we have done, put one witness on for traffic and one for operation and let it apply to both roads?

Mr. Norton: We will shorten it all we can.

660 Commissioner Prouty: You may proceed, Mr. Norton.

Mr. Norton: I was going to examine this witness, and I have not had an opportunity to look at this contract.

Commissioner Prouty: Perhaps you had better wait until tomorrow morning before you examine this witness.

Mr. Norton: I was going to ask if we could take a recess now until tomorrow morning. I am not feeling very well and I think we can save time by taking a recess until tomorrow morning. We will have to have a conference and get our matter together and I think it will be a real saving of time.

Commissioner Prouty: Have you not some witness, Mr. Halsted, whom you can put on this afternoon?

Mr. Halsted: No, we are only a small part in this case. We are going to rest our case largely on the evidence of the other defendants. We have only been in operation but two or three years, and part of those years we have been out of commission on account of the washouts, so our showing will be very small as compared with the other defendants.

Commissioner Prouty: It seems to me that we ought to spend the balance of the afternoon with the examination of some witness. You gentlemen must have made some preparation.

Mr. Norton: Will Mr. Woodford be here in the morning?

Mr. Call: Any time.

661 W. J. HEALY, was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Norton: Give the reporter your name and occupation.

Mr. Healy: W. J. Healy; Auditor of the Atchison, Topeka & Santa Fe Coast Lines.

Mr. Norton: Your department is in charge of the records of the accounting of the defendant railway company?

Mr. Healy: Yes, sir.

Mr. Norton: Have you made an examination of your records to show the distribution of carload citrus fruits in various parts of the United States?

Mr. Healy: I have, for a certain period.

Mr. Norton: For what period have you made that?

Mr. Healy: For the year ending October 31st, 1909.

Mr. Norton: That distribution is to the various groups from A to J inclusive, is it? Let me have one statement for filing and one for Mr. Call.

(Witness produces papers.)

Mr. Norton: I offer as Defendants' Exhibit No. 2 a statement showing the number of carloads of citrus fruits, lemons and oranges

separate, destined to various group territories as per gover-
062 ning tariffs, beginning with Group J, Colorado territory, for the year ending October 31st, 1909.

Commissioner Prouty: Is the territory defined?

Mr. Norton: There is attached to this exhibit a copy of the tariff defining the territory. For instance, Group A being the New York Pier and the Southern Pacific Company, the Southern Pacific Company's Atlantic Steamship Line, (Morgan Line), via New Orleans, Louisiana, or Galveston, Texas, and New York Pier of Mallory Steamship Company, via Galveston, Texas. Group B, Connecticut, Massachusetts, Rhode Island, Maine, New Hampshire, Vermont, and so on.

(The paper above referred to was received in evidence, and thereupon marked Defendants' Exhibit No. 2, Witness Healy, received in evidence March 25th, 1910, and same is attached hereto.)

Mr. Norton: This Exhibit 2 shows the bulk of the distribution of citrus fruit that is handled by the Atchison, Topeka & Santa Fe System to be in what part of the country?

Mr. Healy: It shows as per the heading the fruit going to the different groups by territories, and the total for the period named.

Commissioner Prouty: Have you examined that statement
063 so you can state what part of the movement of oranges was to Buffalo, Pittsburgh and points east?

Mr. Healy: No, sir, I have not that, only by referring to the groups. I have worked them by group territories.

Commissioner Prouty: You need not take time to do that now. The statement shows for itself.

Mr. Norton: It shows, for example, the largest movement of lemons was 1224 carloads to Group C, and the largest movement of oranges is to the same group, 8318 carloads.

Commissioner Prouty: What is Group C?

Mr. Norton: Alabama, Michigan (southern peninsula), Ohio, Mississippi and points in Pennsylvania except as shown on Page 9, New Jersey and New York points except those piers mentioned, Virginia points and West Virginia points, with some exceptions. That is generally where the heaviest movement went. Next to that was Group D with 882 cars of lemons, and 2794 carloads of oranges. Group D being Indiana, Illinois, Michigan (northern peninsula, except as shown on Page 8, southern peninsula as shown on Page 9) and Wisconsin.

Commissioner Prouty: Well, it is hardly worth while to take up any time to read the statement now. It is in any way.

Mr. Norton: I wanted to refer to the exhibit that far in answer to the contention of the complainants that their marketing
064 is farther west. Now, Mr. Healy——

Mr. Call: We spoke of the average movement. You know the larger the crop the farther it moves east, and the smaller the crop the farther it moves west, and we were speaking of the average crop. Last year was our largest crop, and we moved farther east

that year. And the other road furnishes more of the western territory than you do.

Mr. Norton: We show they get anywhere on this continent, and then they go abroad. Now, have you prepared a statement showing the movement on the Santa Fe under refrigeration?

Mr. Healy: I have, yes, sir.

Mr. Norton: We offer that as Defendants' Exhibit No. 3, being a statement showing the number of carloads of citrus fruits, lemons and oranges separately, moved under refrigeration destined east of and including Colorado territory for the year ending October 31st, 1909, grouped according to the governing refrigeration tariffs, and those groups are 1, 2, 3, 4, 5, 6 and 7. There is attached to this exhibit a copy of the tariff provisions showing the groups. This table shows the largest refrigeration being 710 carloads of lemons and 2351 carloads of oranges to Group 3, which is—well, it is
665 too large to read, but roughly stated, St. Louis and Chicago territory.

(The statement above referred to was received in evidence, and thereupon marked Defendants' Exhibit No. 3, Witness Healy, received in evidence March 25th, 1910, and same is attached hereto.)

Mr. Norton: Have you prepared any data respecting the telegrams sent and received?

Mr. Healy: Yes, sir.

Mr. Norton: In the handling of this citrus fruit business?

Mr. Healy: Yes, sir.

Mr. Norton: I offer a copy of this as Defendants' Exhibit No. 4, being a statement of the number of telegrams sent and received by the Auditor, based on the commercial rate, excluding those received from J. S. Leeds and A. A. Hayes, being the Auditor at Topeka, on account of diversions on carloads of citrus fruits, oranges and lemons separately, shipped during the year ending October 31st, 1909, destined east of and including Group J, Colorado territory, as per governing tariffs.

Mr. Healy: If you will allow me, I will explain that.

Mr. Norton: I wish you would explain that.

Mr. Healy: That is the statement that bore my name and
666 started from my office. Attached to it is a statement of the telegrams from Mr. Leeds' office. I have combined them in a recapitulation on the second sheet.

Mr. Norton: The second leaf of this exhibit shows the number of telegrams sent and received by the Manager, that is Mr. Leeds?

Mr. Healy: Yes, sir.

Mr. Norton: Based on the commercial rate, excluding those received from Healy and Hays on account of diversions and so forth, as before read.

(The statement above referred to was received in evidence and thereupon marked Defendants' Exhibit No. 4, Witness Healy, received in evidence March 25th, 1910, and same is attached hereto.)

Mr. Norton: What is the showing of this exhibit, briefly stated?

Mr. Healy: Do you want Leeds' and mine separately, or the combination?

Mr. Norton: Take up the first leaf of the exhibit.

Mr. Healy: Mr. Leeds' Exhibit shows there were 3527 telegrams sent during the year on lemons, costing $4,843.28.

Commissioner Prouty: Just what do you mean by "costing"?

Mr. Healy: At the commercial rate.

667 Commissioner Prouty: You mean that the Santa Fe paid that?

Mr. Healy: No, I mean that is what the commercial rate would be.

Commissioner Prouty: Were those telegrams between points on the Santa Fe line?

Mr. Healy: And all over the country, to New York or wherever the diversion was necessary.

Commissioner Prouty: Wherever you were charged anything for those telegrams they would go into your office, would they not?

Mr. Healy: Yes, sir.

Commissioner Prouty: Wherever no charge was made, you would get your information from Mr. Leeds' office, is that right?

Mr. Healy: Well, the charge was made—we pay nothing on individual telegrams, that is a monthly basis, when we settle under contract. I am figuring these on the basis of what the Western Union would charge were they put on their wires——

Commissioner Prouty: Did you pay anything at all?

Mr. Healy: I do not pay for them. I don't know what was paid.

Mr. Norton: I will make this statement for Mr. Healy. We ascertained the number of telegrams sent and received both

668 over our own wires and over the wires of other companies respecting loads that had left our railroad, and took the number of words in those, and just as an ascertainment of about what the value of that service would be, we submitted it to the Western Union Telegraph Manager and asked him to compute what those telegrams would be worth at the commercial rate, not that we paid those rates, but as an estimate of their value. Of course we pay the Western Union under our contract with it for all messages sent regarding this business over Western Union wires, but we have our own wires on our own route; so that the number of telegrams sent respecting lemons were how many, Mr. Healy?

Mr. Healy: By Mr. Leeds, 3,527; by myself, 4,382; total, 7,909.

Mr. Norton: And at the commercial rate those would have cost——

Mr. Healy: At the commercial rate, for Mr. Leeds, $4,843.28, and for my own, $8,175.10, a total of $13,018.38.

Mr. Call: May I ask what you actually did pay for any of them?

Commissioner Prouty: He says he paid nothing.

Mr. Norton: We have to pay under our contract with the

669 Western Union.

Commissioner Prouty: You pay a lower rate?

Mr. Norton: Yes, this is made to show the value of the service, as I stated. You need not segregate it, but on oranges, how many telegrams were sent?

Mr. Healy: The combination, Leeds and myself, 27,258, costing $43,303.83.

Mr. Norton: Then what was the total commercial value of the service rendered in the diverting of oranges and lemons together?

Mr. Healy: It amounted to 35,590 telegrams, worth $57,268.35.

Mr. Norton: Have you anything else you want to say regarding this exhibit?

Mr. Healy: I made some computations showing the number of cars moved and the cost per car and on the total number of cars we hauled during this period it costs $2.76 per car for telegrams.

Commissioner Prouty: Do you mean it cost you that, Mr. Healy?

Mr. Healy: I will eliminate the word "cost", with Mr. Norton's explanation.

Commissioner Prouty: My understanding is it does cost you something to send some of these telegrams under your contract
670 with the Western Union?

Mr. Norton: Yes.

Commissioner Prouty: You do not desire to show what it would actually cost, but what it would cost if the shipper had to do this work?

Mr. Norton: Yes.

Mr. Call: If we were in the telegraph business?

Commissioner Prouty: No, if they had to go to the telegraph office and pay for it.

Mr. Call: We would not have sent such long ones.

Mr. Norton: Well, there are some long ones, as we shall show.

Mr. Healy: The telegrams averaged $1.61 each, and the diversions cost $5.67, eliminating that word "cost" again, that is what the commercial rate would have been to divert a car.

Mr. Norton: Have you made a calculation to show the number of diversions that have been made during the year ending October 31st, 1909?

Mr. Healy: Yes, sir.

Mr. Norton: I offer that as Defendants' Exhibit No. 5:

Mr. Healy: That is lemons and oranges separately.

671 Mr. Norton: Being a statement showing the number of carloads of citrus fruits, lemons and oranges separate, diverted before and after reaching billed destination, destined to points east of and including Group J, Colorado territory as per governing tariffs, also the number of times each class was diverted, shipped during the year ended October 31st, 1909. That begins with November and ends with October.

(The statement above referred to was received in evidence and thereupon marked Defendants' Exhibit No. 5, Witness Healy, received in evidence March 25th, 1910, and same is attached hereto.)

Mr. Norton: What is the total number of diversions? The first sheet deals with what?

Mr. Healy: The first sheet, I believe, deals with lemons, if it is bound correctly, showing 2,006 diversions on lemons, and the second on oranges, showing 7,848 diversions, and on other fruit, grapefruit and so forth, 257 diversions.

Mr. Call: What do you mean by diversions? Do you mean the number of cars diverted, or do you mean the number of diversions in all?

Mr. Healy: The number of diversions in all.

Mr. Norton: Does this exhibit show the number of times
672 the cars were diverted?

Mr. Healy: Yes, sir. On lemons we had 788 cars which were diverted 1016 times; 608 of them diverted once, 280 diverted twice, 96 three times, 32 four times.

Mr. Norton: That is, diversions before reaching the billed destination?

Mr. Healy: Diversions before reaching the billed destinations.

Mr. Norton: How many were diverted after reaching the billed destination?

Mr. Healy: 789 were diverted after reaching the billed destination; 626 diverted once, 256 diverted twice, 87 diverted three times, 16 diverted four times and 5 diverted five times.

Mr. Norton: Now in the orange diversions, how many diversions were made before reaching the billed destination?

Mr. Healy: On 3280 cars there were 2546 diverted once, 1186 diverted twice, 336 three times; 112 four times, and 5 five times, making 4,185 diversions on the 3,280 cars.

Mr. Norton: How many diversions after reaching billed destination?

Mr. Healy: On the 3003 cars diverted, 2,470 were diverted once, 870 twice, 225 three times, 72 four times, 20 five times
673 and 6 six times; making a total of 3,663 diversions on 3,003 cars.

Mr. Norton: Making the grand total of diversions?

Mr. Healy: Making the grand total of diversions, 10,111, taking the total number of cars that moved in the period now——

Mr. Norton: First, the grand total of orange diversions was 7,843?

Mr. Healy: 7,848, and on others, 257.

Mr. Norton: And the total of all diversions, lemons and oranges together?

Mr. Healy: 10,111.

Mr. Norton: Out of how many cars?

Mr. Healy: The movement of 20,716, or about 49 per cent being diverted.

Mr. Norton: I think that is all for Mr. Healy.

Cross-examination:

Mr. Call: What other commodities moved from California enjoy the diversion privilege?

Mr. Healy: Well, we have some deciduous fruits.

Mr. Call: Name all of them that may be diverted en route the same as citrus fruits.

Mr. Healy: I don't know whether I can name all of them.
674 Mr. Call: You have charge of the diversions?

Mr. Healy: I have charge of the diversions in a way, yes, sir.

Mr. Call: In a way; what do you mean by that?

Mr. Healy: I divert them through Mr. Leeds' office.
Mr. Call: It passes through your office here?
Mr. Healy: It passes through my office here; I get the order.
Mr. Call: You get the order?
Mr. Healy: I get the order.
Mr. Call: Primarily it comes through your office; then you ought to know what other commodities have this same privilege.
Mr. Healy: Well, I ought to know a great many things that the 265 men I handle do, but I cannot call them to mind, and so I cannot name the commodities now.
Mr. Call: Name some of them.
Mr. Healy: Raisins, dried fruit——
Mr. Norton: Mr. Chambers says that all commodities have it.
Commissioner Prouty: Do they have the diversion privilege to the same extent citrus fruits do?
Mr. Chambers: All commodities have the privilege of
675 being diverted in transit just the same as citrus fruits.
Mr. Call: Without extra charge?
Mr. Chambers: Without extra charge.
Commissioner Prouty: That is not true generally at the present time.
Mr. Chambers: That is under the transcontinental tariffs.
Commissioner Prouty: At the present time as a general rule a charge is made for the privilege of diversion, and in case of the northern lines, Mr. Chambers, commodities like lumber are not entitled to any diversion until they reach St. Paul.
Mr. Chambers: It is a matter with the individual lines.
Commissioner Prouty: You say your line does allow diversion on all California products?
Mr. Chambers: All California lines do.
Mr. Call: Now, Mr. Healy, could you say whether or not the citrus fruit required a larger percentage of diversions than deciduous fruit products?
Mr. Healy: I should say a much larger percentage.
Mr. Call: Have you the data to show?
Mr. Healy: No, sir.
Mr. Call: You have no data on that subject?
Mr. Healy: No, I have not made any comparison.
676 Mr. Call: Have you any data on the subject of whether vegetables require more or less percentage of diversions?
Mr. Healy: No, I have made no compilation, only on this citrus fruit.
Mr. Call: You don't know anything about any of the others, then?
Mr. Healy: I have not prepared any data on them.

(Witness excused.)

Mr. Norton: Mr. Durbrow wants to put on a witness.
Mr. Durbrow: I think it will serve the witness' convenience to be examined now.

THOMAS H. PHILLIPS, was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Durbrow: What is your business, please?

Mr. Phillips: I am Traffic Manager of the Earle Fruit Company, handling deciduous fruits, and of the Citrus Union, who handle citrus fruits.

Mr. Durbrow: How long have you occupied that position?

677 Mr. Phillips: 12 years with the Earle Company, and five with the Citrus Union.

Mr. Durbrow: Tell us in a very general way, please, what this Citrus Union is which you speak of.

Mr. Phillips: The Citrus Union is an organization which ships lemons and oranges to all states in the United States, having their packing houses in California on the Santa Fe and Southern Pacific rails, and their agencies in the principal eastern cities.

Mr. Durbrow: Is it conducted upon the co-operative plan that is followed by the Exchange?

Mr. Phillips: No, sir, it is not.

Mr. Durbrow: What is the plan under which the fruit is marketed?

Mr. Phillips: Well, the fruit that is shipped by the California Citrus Union is shipped direct; that is to say, we ship fruit on commission for growers, or we buy fruit and ship it ourselves, either one.

Mr. Durbrow: It is a combination of independent shippers, as I understand it?

Mr. Phillips: Yes, it is a small combination between the individual shippers. The Citrus Union is composed in the ship-

678 ment of citrus fruits, of three firms that originally shipped separately.

Mr. Durbrow: I would like to ask you if you are familiar with the manner in which lemons and oranges are grown and marketed. That is your business, is it not?

Mr. Phillips: No, sir. I know very little of the manner of marketing or growing lemons. My business is altogether the traffic end of it, the business with the railroad companies, and informing our people of the rates, the securing of good time, having inspectors on the line who report to me, in connection with our eastern agents, and the collection of claims, and the routing of shipments.

Mr. Durbrow: I would like to ask you if you are familiar with the innovation that has been spoken of here, this pre-cooling device which is used in connection with the refrigeration of citrus fruits?

Mr. Phillips: Yes, sir, to the extent that in the meeting of our Board of Directors I understood what their wishes were in regard to it, and what we thought about it, and then I attended the meeting spoken of here when Mr. Ripley was in Los Angeles, in which the matter was pretty thoroughly discussed, and expressed the opinion of the Citrus Union in regard to the matter.

679 Mr. Durbrow: I would like to ask you if the members of the Citrus Union are in favor of the individual shippers or the individual packing houses establishing pre-cooling plants?

Mr. Phillips: They are not.

Mr. Durbrow: Why?

Mr. Phillips: Well, in the first place they believe that the carriers should do the pre-cooling, the refrigerating and pre-cooling, because for one reason they do not want to divide the responsibility; and the second reason is that they believe it would be discriminating against the smaller shippers. We would not want to start pre-cooling houses in all our plants, and of course we can understand how some of those parties who have testified that they did want them and who control a large amount of the business could do it very profitably, but I think it would be very discriminatory against the smaller shippers. We would be compelled to build those pre-cooling plants ourselves at an expense we could not afford, or else we would be forced to give our shipments into the hands of probably our competitors to pre-cool them for us.

Mr. Durbrow: You are familiar, are you not, in a general way with the history of the reduction of the lemon rate from $1.25 per hundred pounds to $1.00 per hundred pounds?

680 Mr. Phillips: Yes, sir.

Mr. Durbrow: I would like to ask you if you discussed that matter with the representatives or traffic officials of the railroad companies, and with the endeavor to induce them to reduce the rate from $1.25 to $1?

Mr. Phillips: I did.

Mr. Durbrow: And what reasons were advanced by the shippers in a general way which brought about that reduction?

Mr. Phillips: Well, this was several years ago; I don't remember the exact time, but I think it was about seven years ago; it was certainly after we had a test made. I will say in the first place we had a pretty hard time in our lemon business, and it was claimed in the ast that there was more citric acid in the Sicilian lemon than there was in the California lemon, which we did not believe; and we thought if we could remove that objection we could get in the eastern markets. So there was a fund raised and a test made in New York by some chemists and they were paid a certain amount of money to make a thorough investigation, and then decide, regardless of what the decision might be; and they decided that the California lemon had more citric acid in it than the Sicilian lemon.

681 Then the next thing we wanted, with that advantage, was to get into the eastern markets as far as we could, and we went to San Francisco—I was one of them—and saw Mr. Sproul, who was then Traffic Manager of the Southern Pacific Company, and Mr. Chambers and Mr. Bissell and Mr. Luce, and insisted upon their helping us to get to the market by reducing the rate on lemons.

Mr. Durbrow: And were the traffic officials induced to reduce the rate from $1.25 to $1 to foster this struggling industry at that time?

Mr. Phillips: Well, that is what they said.

Mr. Durbrow: That is what they said, and those were the representations you made to the traffic officials, were they not?

Mr. Phillips: Those were the representations we made.

Mr. Durbrow: I want to ask you this question. Is it not a fact that that rate was reduced by the railroad officials, by the traffic officials, upon the representations which were made by the shippers, with the distinct understanding that it was a relief rate, a temporary rate, and with the distinct understanding that the rate was subsequently to be raised when those conditions no longer obtained?

Mr. Phillips: I understood it that way at the time.

682 Mr. Durbrow: That was your understanding?

Mr. Phillips: That was my understanding, just the same as we worked to get the apple rate reduced, which we did.

Mr. Durbrow: You are familiar with the marketing of lemons, are you not?

Mr. Phillips: Yes, I think so.

Mr. Durbrow: I want to ask you if in your judgment or in your opinion there is any reason why the rate on lemons today should be any different than the rate on oranges?

Mr. Phillips: I do not see why there should be any difference.

Mr. Durbrow: That is all, thank you.

Cross-examination:

Mr. A. F. Call: How much fruit do you people ship now, annually?

Mr. Phillips: Do you mean just citrus, or deciduous and all?

Mr. Call: I mean citrus fruits.

Mr. Phillips: Just now we—well, take last season, for instance. This season would be hard to judge by. I don't know how much we shipped this year, but last year we shipped between 2000 and 3000 cars.

Mr. Call: Between two and three thousand cars?

Mr. Phillips: Yes, of citrus fruits.

Mr. Call: And how many of those cars were lemons?

683 Mr. Phillips: Well, sir, I could not tell you that without looking. I did not know I was to be on the stand today and did not come prepared with that information.

Mr. Call: Haven't you any idea?

Mr. Phillips: I would not have any idea.

Mr. Call: No idea whether it was half or two-thirds?

Mr. Phillips: Oh, yes, so far as that kind of a comparison goes—well, I could not say definitely. I don't suppose it was a third. I do not know without going over the record.

Mr. Call: It was not really over 200 or 300 cars, was it?

Mr. Phillips: If I could have told you that I would have said so; I told you I did not know without looking at the records.

Mr. Call: How much of this fruit which you shipped was bought on speculation?

Mr. Phillips: I don't know—all of it.

Mr. Call: Do you represent any growers, your concern, and if so, who?

Mr. Phillips: I don't know what you mean by representing any grower.

Mr. Call: Do you ship any grower's fruit, or do you buy your fruit on speculation?

Mr. Phillips: Why——

684 Mr. Call: You say "we" think so-and-so. For whom do you speak, yourself or the growers?

Mr. Phillips: I speak for the California Citrus Union.

Mr. Call: When you say "we" think so-and-so, what do you speak for, a bunch of growers?

Mr. Phillips: Whom do you speak for?

Mr. Call: I speak for the citrus fruit industry, 90 per cent of it.

Mr. Phillips: I speak for the Citrus Union.

Mr. Call: I want to know what growers you speak for, or speculators or growers?

Mr. Phillips: I speak for any grower that gives us shipments to ship east.

Mr. Call: Who does?

Mr. Phillips: You come over to the office and I will give you a list.

Mr. Call: This concern you work for is the fag end of the Armour Car Line, is it not?

Mr. Durbrow: I object to that kind of examination.

Mr. Phillips: No, it is not, any more than yours is the fag end of the Exchange.

Mr. Call: This concern you have here is what is known

685 as the Armour Shipping Corporation?

Mr. Phillips: It is not.

Mr. Call: It is not?

Mr. Phillips: No.

Mr. Call: It is owned by Armour, is it not?

Mr. Phillips: It is not.

Mr. Call: Is it not controlled by Armour?

Mr. Phillips: It is not.

Mr. Call: Not controlled by Armour?

Mr. Phillips: No, sir.

Mr. Call: The Earle Fruit Company?

Mr. Phillips: The Earle Fruit Company at Sacramento may be; I don't know anything about it.

Mr. Call: The Earle Fruit Company is part of this concern?

Mr. Phillips: It has stock in it, but it is not controlled by it, and I do not know that the Earle Fruit Company is controlled by Armour, but if it is, I would be perfectly willing to tell you so, and we would not be ashamed of it.

Mr. Call: But you do not know of any grower that you represent, when you say that they do not want to have a rate on precooled fruit?

Mr. Phillips: I said that the California Citrus Union was

686 opposed to it.

Mr. Call: And the California Citrus Union does not produce——

Mr. Phillips: And not only that, but in the meeting that was held in the Chamber of Commerce, or held in the Bullock Building, when Mr. Ripley was here, I believe it was said here this morning it was the consensus of opinion there that they wanted the railroad company to do the pre-cooling; at least when I was speaking there, and gave it as the opinion of the Citrus Union that the pre-cooling should be done by the railroads, Mr. Story stopped me and said there was no necessity of discussing that, as that was the universal opinion.

Mr. Durbrow: Who is Mr. Story?

Mr. Phillips: The President of the Exchange.

Mr. Call: The Citrus Union does not operate or own any orchards?

Mr. Phillips: The members of the Citrus Union do, Mr. Fay and Mr. Spronts, and various members of the Citrus Union do own orchards?

Mr. Call: The Citrus Union itself does not?

Mr. Phillips: Well, now, when you say own the orchards, you mean the ground and all?

687 Mr. Call: I mean produce the fruit.

Mr. Phillips: I do not know. I know the Citrus Union does not as an organization. The members of it do, though.

Mr. Call: When you say you were present at the interview with the railways when it was understood and agreed that the reduction of the lemon rate would be again increased, who was present for the railroads?

Mr. Phillips: Mr. Sproul——

Mr. Call: Who is Mr. Sproul?

Mr. Phillips: He was Traffic Manager of the Southern Pacific. I think Mr. Chambers and Mr. Bissell and Mr. Luce were present.

Mr. Call: Representing the railroads?

Mr. Phillips: Yes. I did not go up to San Francisco with anybody; I went there representing the Earle Fruit Company.

Mr. Call: Where did this interview take place?

Mr. Phillips: Mr. Sproul's office.

Mr. Call: Where?

Mr. Phillips: San Francisco.

Mr. Call: Where you say it was agreed that the lemon rate should again be increased?

Mr. Phillips: I did not say anything of the kind.

688 Mr. Call: I want to know what happened at that interview.

Mr. Phillips: I said that they objected to the reduction of the lemon rate from $1.25, which was the rate then, to $1, or any other amount, for the reason that while they would be glad to help the industry as much as possible, it was their experience that whenever a rate was once reduced for any purpose, it was hard to get it back to what the rate should be again.

Mr. Durbrow: Their judgment has proved correct, Mr. Phillips?

Mr. Phillips: I am not saying whether I think the rate is too high or too low. I am——.

Mr. Call: I am speaking about the time when you say repre-

sentations were made by the growers to the railways concerning the desperate condition of the lemon industry, when it was requested that the rate be reduced, and it was distinctly agreed it should get the increase at some future time. You made that statement.

Mr. Phillips: I did not make that statement. I said that when we requested, or when I requested, I may say; there were others went there, but I was the only one representing the shippers who were there at the interview I had—when I asked them to make this rate and set forth the reasons, they stated that it would
689 be difficult ever to put the rate back again. I understood then from them that after they had said they would look into the matter favorably, that if they did make this rate of $1.00 to help the industry out, it would only be an emergency rate, and after we got the industry established that they would put it back to the rate the oranges were in.

Mr. Call: That is all they told you?

Mr. Phillips: That is all they told me.

Mr. Call: Was any other California grower present?

Mr. Phillips: Not at that time. I went there and asked the interview.

Mr. Call: That was some talk between you and the railroad men you are referring to, then, and not any conference between the citrus fruit growers, as a body?

Mr. Phillips: Not when I was there.

Mr. Call: You are simply talking about a talk between yourself and the railroad officers?

Mr. Phillips: Yes; we were shipping a great many lemons at that time; just the same as I have done with the deciduous fruit, apples; I see them every month.

Mr. Call: That is all.

(Witness excused.)

690 A. P. MAGINNIS, was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Norton: Are you familiar with the Citrus fruit business in southern California?

Mr. Maginnis: Yes, sir.

Mr. Norton: Have you ever been a grower?

Mr. Maginnis: Yes, sir.

Mr. Norton: Have you ever had experience in making an orchard?

Mr. Maginnis: Yes, sir.

Mr. Norton: And bringing it into bearing?

Mr. Maginnis: Yes, sir.

Mr. Norton: And marketing fruit?

Mr. Maginnis: Yes, sir.

Mr. Norton: And refrigerating it?

Mr. Maginnis: Yes, sir.

Mr. Norton: I wish you would state to the Commissioner what you know of the cost of bringing an acre into bearing.

Mr. Maginnis: Well, that depends largely on a number of things. The location of the land, and whether you buy your water with the land, or whether you purchase your water annually; 691 the condition of the soil as to its requirements for fertilization and the cost that you are put to for cultivation. Now, I have a little——

Mr. Norton: In your own case, state what your experience was.

Mr. Maginnis: I have a little memorandum here of the 12 acres which I owned at Highlands, which cost me for cultivation and irrigation—I bought the land and the water for $452 an acre, the bare land and water.

Commissioner Prouty: How long ago?

Mr. Maginnis: That is about 11 years ago, now. I paid, as I said, $452 an acre for the land with the water. Then in order to have it well taken care of I paid more for cultivation and irrigation than most people did. Their usual price was from $15 to $20 an acre. I paid $25 an acre, which amounted to $300 per year. Then the pruning that I have got in this statement was of course for the last year, which amounted to a good deal more. At first there was scarcely any pruning to be done; but the pruning for this last year amounted to $108, or $9 an acre. The fertilizer amounted to $725 or $60 an acre. The water assessments were $15; we owning stock in the water, I simply had the fees to pay, which amounted 692 simply to my proportion of the stock, which was $15, $1.25 an acre. That made the total cost of the care of that orchard $1148, or $95.80 an acre. Now, the picking and hauling of the fruit cost me $910, and that was practically 20 cents a box, a very high price; but we did not let them pick by the box; we put men in there, as is necessary, to be very careful in handling oranges and grape fruit, not to pick as a great many do and let them drop into the sacks, and then drop another one with a long stem to jam the skin of the fruit, which gives it an opportunity to have decay. And I will say right here that in the nine years that I operated that orchard, a good deal of the time I shipped to New York and Boston, and I never had a particle of decay, never had the deduction of one cent for any damage to the fruit, and always got good prices, and that is why this figure of $76 an acre for picking ran so high. Then packing was the ordinary price, about $1350. That made a total that year of $283.25 an acre.

Mr. Norton: That includes boxes?

Mr. Maginnis: That includes the boxes and packing and everything. I got very nearly a carload of fruit to the acre, an average. I got 4510 boxes, and the total cost was $3,408. I sold the oranges and grape fruit for $9,658, and that was not after 693 paying the commission, and taking out the expenses, that was $3,408, left me $6,250 profit.

Commissioner Prouty: For how long a time was that, one season?

Mr. Maginnis: One season.

Commissioner Prouty: How long ago?

Mr. Maginnis: That was two years ago. In the whole time the orchard cost me a little less than $1200 an acre, that is for the land and the water, putting it into cultivation and taking care of it for all the time. It paid expenses after——

Mr. Norton: For the whole nine years, you mean?

Mr. Maginnis: Yes, less than $1200 an acre. And it paid expenses after the third year. Then I got for the crops the different years after that, enough money to pay expenses and pay this nearly $1200 an acre, and about $6000 besides, so that at the end of the nine years I was about $6000 ahead on the proposition, and I then sold the orchard for $26,000, which made a net to me of over $30,000 in the nine years.

Mr. Call: Which is the better proposition, that or the icing contract?

Mr. Maginnis: I would rather have the orange orchard,
694 but I had to sell this in order to get money to put into the ice business.

Mr. Norton: How many acres in that?

Mr. Maginnis: 12 acres. I was going to add that there is a great difference in the handling of fruit. Now Mr. Noyes, I don't know whether he is here or not, but I do not see him anywhere, has an orchard just above this orchard at Highlands off from which two years ago he got over $1800 an acre. That is, he sold his fruit for over $1800 an acre; but his trees are about 20 years old, and of course bore much heavier than mine did.

Mr. Norton: The older the trees the better?——

Mr. Maginnis: They are older trees and larger, and he got as high as six boxes to the tree. Then his are not set as close as mine were. Mine were set what they call septuple, 22½ feet apart in any way you might measure in the rows, 22½ feet, and then the next row starting and alternating there to that, being just 22½ feet apart, and it makes 94 to the acre; and I would set out about 22½ feet apart, but set square, and get about 75 to the acre, or something like that.

Commissioner Prouty: Have you retired from the orange business?

695 Mr. Maginnis: Well, I am not in it just now except I turned around and bought 40 acres more of land there at Highlands, and am putting it out to oranges this spring.

Commissioner Prouty: What did that land cost you?

Mr. Maginnis: $300 an acre.

Commissioner Prouty: Does that include the water rights?

Mr. Maginnis: It includes the water rights but not the water. We have to put down a well; we know there is water there, but we have to put down wells to get the water.

Mr. Norton: And the land 11 years ago cost you $452 with the water?

Mr. Maginnis: The land 11 years ago cost me $452 with the water. Of course that was in an absolutely frostless district.

Mr. Norton: And it was under high cultivation and correct cultivation?

Mr. Maginnis: Yes, sir.

Mr. Norton: Mr. Noyes made what to the acre, a little over a carload?

Mr. Maginnis: Oh, yes.

Mr. Norton: Give me the tonnage, if you can.

Mr. Maginnis: I cannot give it to you.

Mr. Norton: Did you give me the number of boxes?

696 Mr. Maginnis: He got about $1600 to $1800 an acre for his fruit, and of course that would be less his expenses, but I was telling him one day how much I paid out for fertilizer for my last year. Well, he says, "You were stingy." I says, "Why?" "Well", he says, "I paid $1100 for mine", and he says, "I paid over $100 an acre for one little patch of grape fruit that I have got, for fertilizer alone." And he says, "It pays, because you will get it back."

Mr. Norton: Do you know of any others who have had results such as you have mentioned for yourself and Mr. Noyes? Is that uncommon or not?

Mr. Maginnis: No, not uncommon in that locality for trees of that age. For instance, Mr. Cram's place, that is still above there, it is right nearly adjoining where we bought this last 40 acres we are going to set out this spring. He had a lot of trees there, I think about an acre and a quarter; he had 123 trees that were about 22 years old, and they were seedlings, and he sold 26 boxes to the tree off of that orchard. It was something enormous, I never saw anything like it. And Mr. E. T. Earle——

Mr. Norton: What was his name?

Mr. Maginnis: Cram; J. F., I think his initials were, and

697 Mr. E. T. Earle bought those oranges for $1 a box.

Mr. Norton: Are you acquainted generally with the orange business and the lemon business throughout the producing area?

Mr. Maginnis: Yes, sir, to quite a large extent. The lemons, of course there have been a great many lemon orchards that have been torn out.

Mr. Norton: Do you know why?

Mr. Maginnis: Because they were planted on ground that perhaps ought to have been sown to Alfalfa or planted to prunes, and the ground was not adapted to the cultivation of lemons. For instance, Mr. Gherardi down here near Riviera tore out a big lemon orchard and planted the ground to walunts, and he was one of the oldest residents here. He is dead now. He plated the whole ground to walnuts because it was not adapted to the raising of lemons.

Mr. Norton: I presume orange lands have been dug out in like manner because people have learned more about that business?

Mr. Maginnis: Yes, sir, hundreds of acres which have been planted with orchards. A real estate man meets a tenderfoot from the east, and he says, "I want an orange orchard," and he

698 says, "All right, I have one I will sell you out here." What is it worth?" "$300 an acre." "Is it good orange land?" "The finest in the world." And he sells it to him and he plants it, and by the time it gets to bearing he finds he should have planted it to prunes or peaches, and he has got to go to work and cut it out.

Mr. Norton: Do you know anything about the production of Mr. Baer's orchard?

Mr. Maginnis: That is at Porterville, yes, sir. Mr. Phil Baer told me when I was up there two years ago, I took quite a long ride with him, and he showed me several orchards which he said had averaged from $600 to $800 net, clear money, on lemons.

Commissioner Prouty: The real estate man would not want anything much better than your testimony, Mr. Maginnis.

Mr. Maginnis: All right, they are welcome to it.

Mr. Norton: I was now going to put a question along that line. So that these examples you have given may not be taken as exceptional. From your general knowledge of the situation, what is the condition of the orange business and lemon business among those who know the business?

Mr. Maginnis: Well, it is good. Now, I think Mr. G.
699 Harold Powell's book on the cultivation of both lemons and oranges is a very good explanation of the whole thing. He says a great deal of the difficulty in getting good results from either orange or lemon land is the condition in which the people keep it who start to cultivate the orchard and to care for the fruit. They are careless, some of them, in picking their fruit; they say, "Well, I don't need to fertilize, this is good ground, I don't need to fertilize only every other year," and as a result they only get fruit every other year, and a great many things you will find just the same as in all other kinds of business, one man may prosper at it and another man may lose money at the same kind of business, and under the same conditions, simply because one is a good, thorough-going man, and the other does not know how to do it.

Mr. Norton: In which respect it resembles all other kinds of business?

Mr. Maginnis: Yes.

Mr. Norton: Were you present at this meeting which has been referred to several times in the testimony, on the pre-cooling question?

Mr. Maginnis: Yes.

Mr. Norton: I would like to have you tell the Commis-
700 sioner what sentiments were expressed there, pro and con.

Mr. Maginnis: Well, before the meeting was called——

Mr. Norton: Wait just a moment. State why the meeting was called, if you know?

Mr. Maginnis: I was going to say, before the meeting was called, I had entered into an arrangement with Mr. Hodges for this icing plant at San Bernardino.

Mr. Norton: The General Purchasing Agent of the Santa Fe?

Mr. Maginnis: Yes, which was contemplating the erection of this icing plant and pre-cooling plant; and I had already ordered the machinery for the plant for pre-cooling and icing both, and I got back, and Mr. Hodges was at Santa Barbara, and Mr. Leeds was in Los Angeles, and I got a telegram from Mr. Ripley, asking me to come up there that night.

Mr. Norton: From Santa Barbara the telegram came?

Mr. Maginnis: Yes. And Mr. Leeds and I went up there and met Mr. Hodges and Mr. Ripley, and Mr. Ripley said, "What can we do about this pre-cooling business?" He said, "Mr. Edwards and Mr. Story and Mr. Woodford have been up here to see me."

Mr. Norton: That is Mr. Edwards who was on the stand here today?

Mr. Maginnis: Yes, Mr. Edwards who was on the stand.

701 "And they have advised me that the growers are very anxious to put in their own pre-cooling plant, and that it is a loss to us to undertake to do it; that they feel that the pre-cooling must be done at the packing house where the fruit is picked and brought in." And he said, "We would prefer not to erect this pre-cooling plant if the growers are going to do as they say they are," and he says, "I would be glad to have you postpone it." Well, I said, "I have made a contract with the people in Milwaukee for all the machinery, and we have to countermand that some way." He says, "All right, go and do that." I sent my son Frank to make an arrangement with the Vilters people to cancel that agreement, and he went there and did that, but he left a clause in the agreement that at any time we saw fit to order this machinery we could have it, with the exception of basing the price of different kinds of pipe we could get, to be varied with the market. Then he came home and the growers, a great many of these gentlemen that I see here, called this meeting which was held here, Mr. Woodford and Mr. Story and Mr.——

Mr. Norton: Mr. Dreher?

Mr. Maginnis: No, and Mr. Edwards were present, and the growers all talked, I should think for an hour and a half or two

702 hours, giving an idea of the cost of their installing this pre-cooling business, and figuring something like eight or nine million dollars that it would cost the growers to do that work at the 200 or 250 packing houses there were scattered over the state, saying that they felt as if the railroad company ought to establish this pre-cooling plant and take care of the refrigeration, and that they considered that the law provided that they must do it. Then the question came up as to what would be the expense of this pre-cooling. Mr. Ripley made the statement that they did not know what the expense would be, that our experiments in pre-cooling so far had determined a saving of something like 23 per cent in ice, and that their hopes were that the saving in ice would be sufficient to pay for the pre-cooling, that the pre-cooling could be done without any addition to the refrigeration charge, and if it could, of course it would be a great advantage to the growers, for they claimed a saving of all the way from $100 to $250 a car by the good of pre-cooling. And we had experimented to quite an extent at San Bernardino; I did that work myself, and put up a pre-cooling plant; and we felt—I went to see Mr. Powell, and he told me, he said, "I will tell you, this pre-cooling——."

703 Mr. Norton: That is the Government expert?

Mr. Maginnis: G. Harold Powell, at Riverside. He said, "This pre-cooling is something we have got to consider must be done by unloading the fruit, putting it into the houses, and pre-

cooling the fruit in the boxes and not in the car, because," he says, "you can take a box of oranges and set it into a cold storage room, and according to the temperature of that fruit, if it is high, if it is 80 or 90 degrees, it will take it perhaps 48 hours to attain the temperature of the room; if it is 70 or 75 degrees, it may do it in 24 hours; but you can figure," he says, "about two degrees an hour, which is the best that you can get out of fruit by pre-cooling it." Well, after his making that statement I put up this pre-cooling plant at San Bernardino, and started in experimenting in that way.

Mr. Norton: Pre-cooling in the house?

Mr. Maginnis: Pre-cooling in the house, but I used a different plan from what is used down here at Los Angeles, at the Los Angeles Ice & Cold Storage Company. I put in a big fan and started that in just about as the Pomona people have got their plant, with an air duct which blows the air through this duct, and with holes bored all through the floor below, and the air would go into the duct and under the floor and up through the boxes of fruit
704 with quite a circulation, and up to the top and back over the ammonia pipes again; and we would run that for an hour or two and then reverse it and blow the air in from the top, and the cold air would go down through the boxes, and then take it out and back through the bottom. Well, by the good circulation of that air we could pre-cool a car of that fruit in about 24 hours. And we tried that for a year. Mr. Leeds came into my office one day with a gentleman by the name Gage, and he said that he could pre-cool this fruit in the cars. Well, I said I was from Missouri, that I didn't believe it could be done, that I thought it ought to be pre-cooled in the houses, but they put in a plant there with his system, and telephoned me they were ready then to try a car and I went over there. They had a bad car, it was open, and lots of places where the air could blow through it, and they started in on that car, putting in—the fruit registered, I think, 82 degrees, and they started the air into that car at about 15, and they blew it that way for an hour or three quarters of an hour, and it came out at about 56. Then they raised the temperature of their air to about 25 degrees, then blew it for another hour; and then they raised it again to about 33, and blew it for two hours more. They had placed in this car in the center of the fruit in the boxes, as near as they could get to the center of the boxes, one of these
705 long thermometers, and had placed four of those thermometers in various parts of the car, and at the end of four hours the temperature of that fruit, the center of that fruit, was down to 47 degrees, and we figured that that was low enough to take it, because 45 degrees is about as low as you can get the temperature of a car with fruit in it under standard icing. Then we started these cars through east. I was going to say before, we endeavored to determine with what degree of safety this fruit could go through to the east without further icing, and we tried to get Mr. Leeds to authorize us to send it through under orders without icing, but he said that they did not feel like they could do that, so I sent four different times six cars, three of pre-cooled cars and

three under standard icing, and sent a man with them through to Kansas City who kept his thermometers in the boxes inside the car, and kept a record of the outside temperature, and kept a record of the variations inside, under orders from Mr. Leeds to re-ice whenever the bunkers showed down somewhere near half full; and we determined after experimenting all summer in that way that standard icing was the only thing that could be depended on to keep the temperature down in the car, keep the temperature at about 45 degrees. Now, of course there is a big difference in the
706 early part of the season, perhaps as late as May, cars will go through without wasting nearly as much ice as they will in hot weather. But all good refrigerating men will tell you if you get that temperature down to 33 or 34 degrees, the temperature of the fruit in the car, and then let it rise to 50, that you damage the whole car; that the temperature should be kept uniform; that it is just like taking fruit out of cold storage to let it change after you start it. So we adopted about 45 degrees as the temperature we would pre-cool to, and then we found we saved about 23 per cent of ice on the average. Of course, take a car loaded at San Bernardino, the car was hot and the fruit was hot, and we put in 4½ tons of ice, and at The Needles it would be about all gone. I have seen cars go into The Needles with not over 200 pounds of ice in the bunkers, which were standard iced. And when they were pre-cooled, you could hardly put in a cake of ice at The Needles. When you would get to Winslow was about when the fruit in the car under standard icing would ordinarily be uniform, the temperature would be uniform. Then we would put in perhaps a little more ice. Then at Las Vegas we would put in a little more, but not as much, 1800 pounds, 2000 pounds, sometimes 2800 pounds, depending on the outside temperature we went through; but none of it ever went through with-
707 out re-icing.

Mr. Norton: 2800 pounds to what point?

Mr. Maginnis: Sometimes we would put in as high as 2800 pounds, I think at Las Vegas, on a pre-cooled car.

Mr. Norton: How many cars did you test this way? You spoke about sending out three pre-cooled and three under standard refrigeration once. The pre-cooled cars were pre-iced?

Mr. Maginnis: They were iced at San Bernardino. We had them iced, but they were sent up after the cars were precooled, to load.

Mr. Norton: That is what I mean.

Mr. Maginnis: And those that were pre-cooled in the car were iced and sent right out with the inspector, whoever we sent, with them. Some of them we sent without any inspectors, but under standard icing.

Mr. Norton: After reciting that you sent three pre-cooled and pre-iced, I caught something about your carrying this on for some time. How many cars did you experiment with in this way?

Mr. Maginnis: I don't know, without looking at the books, but I think we pre-cooled the first summer about 375 cars.

Mr. Norton: What summer was that?

708 Mr. Maginnis: That was in 1908.

Mr. Norton: And what do you say of your experiments with this system?

Mr. Maginnis: With the new system?

Mr. Norton: With the system of pre-cooling you have tested?

Mr. Maginnis: Well, sir, we had a number of letters from people who had sent fruit into our place to have it pre-cooled, and they were all very satisfactory, saying that it had been a great help to the fruit. For instance, I had one car of fruit that came in there—we made it a point to make an examination of every car of fruit which came in, taking out four or five boxes and examining it to see as to its condition in respect to decay, and this car came in, and we got a letter from the party, which I turned over to Mr. Chambers or Mr. Healy's office, saying if pre-cooling would do that car any good it was surely the proper caper. It was in July and the oranges were very soft, and the examination that we made of the car showed 28 per cent decay, which was not correct, for the reason that when it got to Chicago the examination only showed 19 per cent decay, which showed that we got hold of some pretty bad boxes in selecting the boxes on which we made the examination; but it also showed it stopped the decay on that fruit and saved it.

Mr. Norton: Well, you spoke in your testimony about

709 sending your son east on Mr. Ripley's decision to countermand the order for the pre-cooling plant?

Mr. Maginnis: Yes, sir.

Mr. Norton: And the testimony is here that you have a pre-cooling plant at San Bernardino?

Mr. Maginnis: Yes. At this meeting which we had, these growers, after talking a couple of *yours*—Mr. Ripley got up and said: "Gentlemen, I am surprised to hear the talk which has been made here." He says, "It is very different from what these gentlemen made, Mr. Woodford and Mr. Storey and Mr. Edwards, when they came to see me. I would like to hear from them." And Mr. Woodford and Mr. Edwards, neither of them said anything, but Mr. Storey said that that was a matter they had not taken up fully with the growers before they had seen him, but that they had looked at it as a thing that ought to be done, but that since consulting with them, they had concluded that the railroad company ought to put in this plant. So Mr. Ripley authorized me to go ahead with it.

Mr. Norton: In their first representations they assumed that what they wanted, all the growers wanted?

Mr. Maginnis: Yes.

Mr. Norton: And when it came to this meeting, and the

710 general showdown, it developed there was considerable opposition to this general construction of pre-cooling plants by the shippers?

Mr. Maginnis: At that time there was not a word said by any of the representatives of all the exchanges that were there in favor of the growers putting up their pre-cooling plants, not one solitary word. Mr. Call was there.

Mr. Call: I don't know what the object of all this is myself.

Commissioner Prouty: I think, Mr. Call, that perhaps we ought to have in a general way, if we can, the views of the growers of citrus fruits upon this subject of pre-cooling, and for that reason I have allowed this witness to tell his story, and I think he may conclude it. Just what bearing that all has on the disposition of the question before the Commission, I do not undertake to intimate. Apparently you attack this rate or charge which is made for pre-cooling as being too high and unreasonable, and say there ought to be another charge.

Mr. Norton: My purpose about this, in answer to Mr. Call, is to give to you just what Mr. Ripley wanted when he came over here to find out what the people wanted, and I want to say this, from the question you put this morning you had the idea that there
711 was quite a unanimity of desire to get this service.

Mr. Call: I might shorten it up by saying we have no possible objection to the railroad company performing this service if they will do it right and at a reasonable price. We are glad they have the plant, and are preferably willing they should go on.

Commissioner Prouty: Mr. Leeds claimed this service of refrigeration must be done as an entirety by one person, and it could not properly be split up between the shipper and the carrier.

Mr. Norton: That was only as to icing.

Commissioner Prouty: I do not quite see myself how you are going to separate pre-cooling from the icing. If these gentlemen see fit to pre-cool their cars, if they can afford to do it, it is only because it goes for a less sum.

Mr. Norton: They are pre-cooling the fruit and not the cars, they do not undertake to pre-cool the car.

Commissioner Prouty: I know they do not, but they pre-cool the fruit, and when they get it in there, and get it ready to shut up, the car is cool. The whole thing goes together, the pre-cooling and pre-icing are part of the same thing, and it hardly seems to me you can separate the pre-cooling from the pre-icing.

712 Mr. Call: You cannot do it.

Commissioner Prouty: Therefore it means that you can pre-cool this fruit and put it in the car and ice the car and the car goes to destination without any further care. Now, you say that is not so.

Mr. Norton: Is it so?

Mr. Maginnis: No, it was not our experience, and it was impossible, under Mr. Leeds' direction——

Commissioner Prouty: I will observe once more, that this fruit as pre-cooled by Mr. Maginnis only reached a temperature of about 45 degrees. As pre-cooled by these packers it reaches a temperature of 33 degrees, and becomes, not a block of ice, because the orange is not frozen, but the boxes are cool and they are put in there close together, and the claim of the shipper is, whether correct or not, of course I only know from the testimony—that that mass of fruit which has been reduced to a temperature of 33 degrees, will maintain

a proper temperature to New York City with one filling of the bunkers.

Mr. Maginnis: Well, we will be glad to show that while they gave instructions not to re-ice these cars, that they were re-iced, and we can show by figures and car numbers how much ice was put in
713 them en route, and that the temperature of the car, the ice that is in the bunkers, will not keep that car 33 degrees or 34 degrees or 35 degrees, or anything better than 45 degrees, and if they had taken the temperature of their cars at Winslow, which they loaded out here, they would have found that they were standard iced, that the temperature had not been kept down to 33, and raised to 45.

Commissioner Prouty: I do not understand there is any claim that you can reduce the temperature to 33 degrees by standard icing, but the claim is by pre-cooling this fruit, you obtain a much lower temperature than can be obtained by standard icing, and that when it is once pre-cooled it can be put in a car and the bunkers filled with ice and the car sent through to Chicago. Now, the best way to show that could not be done would be to take one of your own cars through to Chicago. Why didn't you do that?

Mr. Maginnis: We did.

Commissioner Prouty: What was the condition when it got there?

Mr. Maginnis: We did not take any through without re-icing because Mr. Leeds would not allow it, and the temperature—the decay of the fruit commences just as soon as you take it out of cold storage, and the same condition exists in the car; if you
714 let the temperature of a car rise too high, your fruit will begin to damage, and then comes a claim for loss.

Commissioner Prouty: You say if you were to pre-cool the car of oranges and reduce the temperature to 33 degrees, that as soon as you allow the temperature to rise, those oranges will begin to decay?

Mr. Maginnis: They will.

Commissioner Prouty: I should suppose it would be fatal to pre-cool or refrigerate a car.

Mr. Maginnis: Well, the same thing, you know probably how fruit goes when it comes out of cold storage; it will last but a very short time.

Commissioner Prouty: No, I don't know anything about it.

Mr. Maginnis: Any good refrigerator engineer could tell. I think they ought to have some one here to tell about that.

Mr. Call: I would like to make a suggestion that suppose each of us, before this hearing or about the time of this hearing at Washington, send a car down to Washington, each preparing it in the method which we claim is best, and let Mr. Powell examine it, and an Examiner of the Commission examine it and report.

Commissioner Prouty: It is a very easy matter to find out whether you are right or not. The proof of the pudding is in the
715 eating, and if the car will go through as you say, the records will show it.

Mr. J. H. Call: You did not send any cars out down there at anything like 33 degrees, did you?

Mr. Maginnis: No.

Mr. Norton: I was going to call his attention to that. The complainants pre-cool as low as 33 degrees, while yours are pre-cooled say to 45 or 47 degrees?

Mr. Maginnis: Yes.

Mr. Norton: And therefore the degree of cold at which you started could not be expected to carry so far as the degree at which they started?

Mr. Maginnis: Well, that may be true. Of course temperature——

Commissioner Prouty: Really, it is hardly worth while to dispute about this. The complainants say the thing has been done; they have shipped 400 cars, one concern says, this last year, and you have put in a tariff which contemplates the movement of pre-cooled fruit, and now before the Commission decides this question we have got to try the experiment and find out whether it can be carried or not, and it is hardly worth while to spend any great amount of time on either side. We will of course hear this witness and any other witness you may desire to introduce, but we might sit here a year and
716 listen to this testimony without reaching any very definite conclusion.

Mr. Norton: Have the complainants a tabulation showing the shipments pre-cooled and iced?

Commissioner Prouty: Those are the shipments specified here on account of which they claim reparation. They have filed an exhibit against the Southern Pacific and against the Salt Lake road as showing definitely certain shipments, some 400 cars, which they say were pre-cooled, upon which they were obliged to pay the refrigeration charge or pre-cooling charge, and on account of which they claim reparation.

Mr. Norton: But those went through, I think, before the tariff took effect.

Mr. Call: Those were all pre-cooled and pre-iced cars, but they did not charge up on all of them. There are quite a number carried through on which they did not charge at all, I think 100 or 200; then you charged full refrigeration on a lot of them, and after the pre-cooled rate went into effect, a lot of them were shipped under that rate. But we can furnish a list. It would be a little more than 400.

Mr. Norton: My understanding is that they sent a number of cars pre-cooled and pre-iced on which both the Santa Fe and
717 the Southern Pacific charged the full icing tariff.

Commissioner Prouty: Up to a certain time?

Mr. Norton: Yes, and after that the tariff was changed so that a $30 charge was made, and the Santa Fe did not re-ice after that. Now, those are the cars I want to trace, and I would like a statement of them.

Commissioner Prouty: You say you did not re-ice after this tariff was put in?

Mr. Chambers: That is correct.

Commissioner Prouty: Does the statement you have put in, Mr. Call, show the amount you paid on each car?

Mr. Call: It shows the amount we paid on each car.

Commissioner Prouty: I think if you will look at that statement, wherever they paid the $30, that car went through without re-icing.

Mr. Chambers: Without being disturbed at all.

Mr. Norton: Can we get that from the statement?

Commissioner Prouty: I think you can get that from the statement.

Mr. Norton: Those are the cars I wanted to trace. You heard testimony here about the furnishing of ice for refrigeration at Los Angeles at, I think $2.50 a ton?

Mr. Maginnis: Yes.

718 Mr. Call: $2.25.

Mr. Norton: I will ask you to state what you will about that.

Mr. Maginnis: Well, I will say very freely, I built the Home Ice plant here in Los Angeles about eight years ago, and we had a 100 ton plant there, and while we were running that of course we had to have some surplus ice in the storage. The most of that ice we sold at from $8 to $12 a ton in general delivery throughout the city, which is the price now. Then we sold to large consumers like the creameries, at $3 a ton. Of course we could have sold that ice at $1 a ton, it was just like picking up money in the road to get rid of something we had on hand, and could not sell for $12 a ton; it would simply have reduced our average a little bit, and I think that is the same condition. I have not seen this contract, but I do know from my experience in making ice that you cannot make it here at Los Angeles for $2.25 a ton. It cannot be done, it cannot be made for it.

Commissioner Prouty: What does coal cost here?

Mr. Call: We use oil.

Mr. Maginnis: We use oil here, and it costs about, delivered at the plant now, $1 a barrel.

719 Commissioner Prouty: That is equivalent to $4 a ton for coal?

Mr. Maginnis: It is equivalent to about $4 a ton for coal, about 3½ barrels of oil is equivalent to a ton of coal. They figure they can get a ton of ice out of a barrel of oil. There is $1. Of course at Kansas City they make ice cheaper than at Winslow, because they get their coal so much cheaper. At Winslow our actual expense outside of fuel, by making 17,000 tons, runs $1.40. Then add fuel to that, and it makes it cost us about $2.50. Of course our contract at Winslow provided for fuel at $2 a ton with a sliding scale of figures for prices above and below that. Well, the price increased after the law was passed providing that freight should be paid, and they could not give us the rate for freight that they used themselves.

Commissioner Prouty: Does the Atchison road buy its ice from you in Los Angeles?

Mr. Maginnis: They never bought any ice from me here, but I

have been furnishing ice to them at Kansas City and Winslow and expect to at San Bernardino.

Commissioner Prouty: How much do you expect to get for it at San Bernardino?

Mr. Maginnis: That has not been determined, until we get at the cost of the plant. You have to figure on a contract for ice,
720 if it extends for 15 years as mine does at Kansas City and at Winslow, on that being the end of your time for furnishing ice, and you have to count up one-fifteenth of the cost of the plant for depreciation each year; and your maintenance and expenses added to it without considering those expenses of interest on investment or taxes or insurance, our actual cost for ice at Winslow was $1.40 a ton outside of fuel, and when you add the fuel to it, as it costs over there, it made over $1 more. Now here we bought our oil for, I think 65 cents a barrel, and had it delivered with a switching charge which made about 85 cents a barrel which our oil cost us, so you can say that is 85 cents for fuel. Then add $1.47 to that for storage and your men to operate the plant, and you will find you have more than $2.25 a ton in actual cost.

(Whereupon, at five o'clock p. m., the further hearing of the case was adjourned until March 26th, 1910, at ten o'clock a. m.)

721 LOS ANGELES, CALIFORNIA, *March* 26, 1910.

Met pursuant to adjournment at ten o'clock a. m.

Present: Commissioner Prouty and other parties as before.

Mr. Durbrow: Before proceeding, your Honor, I have a suggestion to make and would like to have the matter determined now in order that we may make the necessary arrangements. Some suggestion has been made as to having your Honor inspect some of these pre-cooling plants. I have to suggest that we might arrange tomorrow for your Honor and the Complainants' representatives and the representatives of the different lines to inspect the pre-cooling plants and icing plants of the Southern Pacific, the Santa Fe and the Salt Lake line and also the plants of Mr. Edwards and Mr. Dreher; and we can arrange a very convenient schedule which will permit your Honor and the representatives of the different parties to inspect all those different plants in a day. And I had in mind to ask your Honor to accompany the party and also three representatives of the Complainants and there will be two representatives of each of the Defendant lines, which will make a party of ten, which is about all we can conveniently accommodate. I think it will be helpful to all of us.
I know it will be to me, to see how this pre-cooling and pre-
722 icing is actually performed, and if that meets with your approval we can arrange for such an inspection.

Mr. J. H. Call: My only thought was, if your honor is going to be here over tomorrow, you might like to go out and see some of the groves and see what you could conveniently. I did not want to make a job of work out of it; I did not want to tire out the Commissioner with traveling over the country and looking at these things on Sunday, but I thought if it could be made a little diversion to go

out and see some of these things a short distance, you might like to go.

Commissioner Prouty: Where is the pre-cooling plant of the Southern Pacific?

Mr. Durbrow: The pre-cooling plant of the Southern Pacific and the Salt Lake line is at Colton.

Commissioner Prouty: How far is that from here?

Mr. Durbrow: About 57 miles. And the Santa Fe's plant is at San Bernardino. Those are the two pre-cooling and pre-icing plants of the carriers.

Commissioner Prouty: Is your plant constructed on the same principle as the Santa Fe?

Mr. Durbrow: Practically.

Mr. Call: They are very close together, only three or four
723 miles apart.

Commissioner Prouty: It might be instructive and perhaps not, if I could see a pre-cooling plant. If I can look at one of your pre-cooling plants and perhaps at one or more of the pre-cooling plants in connection with the packing houses, but it would hardly seem, Mr. Durbrow, as if we ought to devote the whole day to that. How long would it take us?

Mr. Durbrow: I think in the afternoon or in the morning, your Honor, whichever suits your Honor's convenience, we could see one of the pre-cooling plants of the carriers and one of the pre-cooling plants of the Complainants.

Commissioner Prouty: Which one would it be best to look at?

Mr. Call: I do not know, the plant at Highlands, I think, is a little more complete in itself.

Commissioner Prouty: How far is that from here?

Mr. Call: It is a little farther.

Mr. Durbrow: That would take us a little farther, but we might look at Mr. Dreher's plant at Pomona and the Southern Pacific plant at Colton, that will be the most convenient way of taking in the situation.

Commissioner Prouty: Well if that is agreeable with the Complainants it occurs to me it might be more or less instructive.

724 Mr. Call: Yes.

Mr. Norton: Could not we move across from Colton and see the Santa Fe's plant at San Bernardino?

Mr. Durbrow: It would not take more than an hour.

Mr. Norton: We think we have the plant.

Mr. Call: We could take a couple of autos and run over.

Mr. Durbrow: We can arrange to have the car switched onto the Santa Fe line.

Commissioner Prouty: What time will be most convenient for you to go?

Mr. Call: I am not particular about the time, but I would suppose it would be best to start in the morning.

Commissioner Prouty: I think that would suit me the best.

Mr. Durbrow: We would rather have your Honor start in the morning because the cars will be there pre-cooling in the morning.

Commissioner Prouty: About what time in the morning?

Mr. Durbrow: About nine o'clock. Is that convenient?
Mr. Call: That will suit. My brother, I think, will go.
Commissioner Prouty: I will be very glad to leave here at nine o'clock.

Mr. Durbrow: From the Arcade Depot at nine-fifteen.
725 There is a train out at 8:55 which we would have to follow, so will have to make it nine-fifteen.

Commissioner Prouty: Let it be understood then that we will leave tomorrow morning at nine-fifteen and look at your plant at Colton and perhaps at the Santa Fe plant and at one or more of the Complainants' plants.
Mr. Call: My brother and Mr. Storey, the President of the Exchange, will go.
Commissioner Prouty: While we are on this subject of refrigeration I think some statement should be furnished showing the equipment in which this traffic is moved, if there is at the present time any difference in the length of the equipment. Your cars are practically all uniform in length, are they not?
Mr. Norton: The refrigerators are forty feet long, I think.
Commissioner Prouty: Do you move this traffic in anything except refrigerator cars?
Mr. Norton: Not at all. We use refrigerators for it all.
Commissioner Prouty: So that your cars are all forty feet?
Mr. Norton: Yes.
Commissioner Prouty: Mr. Durbrow, are your cars all forty feet?

Mr. Durbrow: All standard forty-one foot cars, I believe,
726 outside measurement.

Commissioner Prouty: Mr. Halsted?
Mr. Halsted: We use the same cars, Pacific Fruit Express cars.
Commissioner Prouty: So that all these cars are standard length, forty feet in length. How many of these cars are operated with what are called collapsible bunkers?
Mr. Norton: Mr. Leeds says we have four or five hundred and he says there are five hundred more coming.
Commissioner Prouty: You may proceed now.
Mr. Norton: Mr. Call, did you submit to us a statement of the cars pre-cooled and pre-iced that went to destination without ice on the Santa Fe?
Mr. Call: I don't know.
Commissioner Prouty: I understood Mr. Call to say that he submitted a statement showing the cars shipped under your pre-cooling tariff and for which they paid the thirty dollar charge.
Mr. Norton: I cannot find that and Mr. Chambers says they have never moved more than two cars on our line. You got the understanding yesterday that this had been tested out and tried and found sufficient?

Commissioner Prouty: Yes.
727 Mr. Call: What is your statement?

Mr. Norton: The Commissioner got the idea yesterday that this pre-cooling and pre-icing had been tested out under this tariff and found sufficient and adequate.

Mr. Call: Under the tariff——

Commissioner Prouty: My impression from the testimony given by the Complainants was that some four or five hundred cars had been shipped by this method and that it had proved perfectly satisfactory. Your testimony cast some doubt upon it, since it indicated that these cars, against the instructions of the shippers, had been re-iced in transit.

Mr. Norton: That was before the tariff was changed.

Commissioner Prouty: That was before the tariff was changed. Now I understand after the tariff was changed a certain number of cars had been shipped under your pre-cooling tariff which had not been re-iced in transit.

Mr. Norton: Only two, so it has not been tested.

Commissioner Prouty: I further stated that the Commission itself, before it decided this question——

Mr. J. H. Call: There have been fifty-four cars shipped which have not been re-iced.

Commissioner Prouty: You should furnish a statement
728 showing the cars that have been shipped and not re-iced under the pre-cooling tariff.

Mr. Call: To make this clear in the record perhaps a very short history of it would be helpful——.

Mr. Norton: All I wanted was to disabuse the Commissioner's mind that this had been demonstrated.

Mr. Call: I wanted to correct the impression which you had and make our position clear so there would be no misunderstanding about it. These pre-cooled shipments commenced in 1908, and at that time the Santa Fe road had what we called a Texas tariff which permitted pre-icing. Under that we shipped from the Highlands plant something like approximately one hundred cars, with the notation on the shipping bills of "Do not reice, do not open the vents or ventilate" or words to that effect. That notation was permitted during the major part of the year 1908, and under that from the Highlands plant there were approximately one hundred cars moved. That billing was permitted. So far as we know——

Commissioner Prouty: Do you understand those cars were iced in transit?

Mr. Call: Our understanding is that there were not any of them iced in transit.

729 Commissioner Prouty: You never paid anything for icing those cars in transit?

Mr. Call: There was no bill made against us for re-icing in transit and we were not charged refrigeration. It was permitted under what we call the Texas tariff. They did not bill it until it was all over, and after it was all over they billed us for the regular refrigeration charges, which we have never paid, and that is still in controversy. Then they abolished that Texas tariff and during the latter part of 1908 and after that they refused to allow us to make the notation on our billings "Do not re-ice" and put on their own instructions. After that time we do not know whether they were re-iced or not, up to the time that they inaugurated the thirty dolla

arbitrary charge. After that time there were only two or three cars shipped from the Highlands plant over the Santa Fe road. With regard to the Pomona plant, that plant uses the Southern Pacific line very largely and the Southern Pacific had a different rule from the Santa Fe. That plant shipped a great deal more fruit. It shipped several hundred cars and under the Southern Paacific ruling the notation was made upon all of the shipments "Do not reice." So that that notation went on all those billings. Now we do not know about the Southern Pacific nor the Salt Lake, whether
730 they used any ice in transit or not. That is correct, is it not?

Mr. Dreher: Yes, sir.

Commissioner Prouty: I wish to say to both sides as I said yesterday, that before the Commission passes upon that question it will take measures to satisfy itself whether that system is a practicable and workable system of refrigerating cars.

Mr. Call: That is what we would wish, and I would say that we have about one hundred cars on the Santa Fe and a large amount on the Southern Pacific that we have no knowledge of re-icing being done and the cars came through in good shape.

Mr. Durbrow: I would suggest that we outline some plan at some future time that that test be made, so we may all co-operate with the government inspectors, and I think the results of those tests will be very satisfactory; but I think they should be extended over some months from time to time.

Commissioner Prouty: Yes, it occurs to me before the Commission can pass intelligently upon the question of refrigeration it might be necessary to run the test over the whole season, or the hot portion of a whole season.

Mr. Durbrow: Yes, and if your Honor will outline some plan we will be very glad to follow it and co-operate.

731 Commissioner Prouty: I will do that before the end of the hearing.

Mr. Call: I will now file the excerpt from the bill of complaint of the Santa Fe Railroad which was offered yesterday and furnish counsel for the Defendants with copies.

Mr. Norton: You are just filing that or——

Mr. Call: No, having it marked as an exhibit.

(A paper offered in evidence, marked Complainants' Exhibit Number 37, received in evidence March 26, 1910, and same is hereto attached.)

A. P. MAGINNIS resumed.

Mr. Norton: Recurring to that meeting which President Ripley came over from Santa Barbara to attend, I want to know whether the growers made any protest to him that the common carriers should furnish this refrigeration, including the pre-cooling and and what reasons they gave if any.

Mr. Call: There is no dispute over that, we still adhere to that position, that we desire the railroads to furnish and complete if they

will these pre-cooling plants and do all the pre-cooling for us and re-icing.

Mr. Norton: You do not apprehend what I am getting at. If you will listen——

732 Mr. Call: As long as they will do it at a reasonable price and do it well.

Commissioner Prouty: Let me ask you, Mr. Call, do you concede that this pre-cooling would properly be done by the railroads?

Mr. Call: I think that they can do it if they will, but we do not feel that they can do it by reducing the fruit to 45 degrees.

Commissioner Prouty: Well you already have a plant at Pomona and you have a plant at Highlands?

Mr. Call: Yes.

Commissioner Prouty: Perhaps other plants are in process of construction. Now do you concede that the railroads may establish a tariff for pre-cooling and insist upon doing the work itself and insist that the plant at Pomona and the plant at Highlands shall not be allowed to pre-cool shipments at the regular pre-cooling rate?

Mr. Call: No.

Mr. Norton: And we do not claim that.

Mr. Call: We feel this way about it, that they can afford to do it for less money than we can, because we have a number of small packing houses around over the country that it would be quite a burden for them to install their pre-cooling plant, they can

733 do it if they have to, but we do not want to do it. Perhaps in a few locations they could do it conveniently, but we feel this way, they ought to be able to compete on a competitive basis, and if the shipper is allowed to pre-cool and pre-ice his fruit and ship it through without any arbitrary charge, that the railroads ought to be able to compete with that mode of refrigeration, because they will have a larger plant; and while perhaps we have some advantage in having the pre-cooling station where the fruit originates, some advantage in that, they would have so much greater advantage in being able to do it cheaper in a large plant, and that they ought not to object to that competition, because they have an advantage in the competition, and we feel the result would be they would do most of the work, all they would care to do and all they could do, if they would meet us on that basis.

Commissioner Prouty: Just what do you mean by that basis? If they were to establish a pre-cooling plant and a tariff for pre-cooling and allow you to pre-cool all you saw fit yourselves, and when I say pre-cooling I mean pre-cooling and pre-icing, suppose the Southern Pacific and the Santa Fe do what they are indicating that they expect to be able to do; they establish these pre-cooling plants and they establish a pre-cooling rate, which is the

734 same as the present refrigeration rate; under those circumstances you would ask the privilege of establishing individual pre-cooling plants?

Mr. Call: We would have to do it.

Commissioner Prouty: And of making the initial icing?

Mr. Call: Yes, sir, and the result would be they could not do

the business on that basis. We would put up our own pre-cooling plants at every packing station in California.

Commissioner Prouty: If it is practical to pre-cool and pre-ice this fruit and send the fruit through to destination with one icing I am not able to see at the present time why the shipper might not be allowed to do it. There is no service in transit required. But could the carrier safely undertake to transport the fruit under those circumstances? A car would go safely to Chicago if it goes in eight days, but suppose through some accident it is held out some nine, ten or fifteen days, who would stand responsible for the delay?

Mr. Call: We stand responsible by the billing and under the law as it is settled we have the right to take that burden upon ourselves, the same as we do under ventilation. What happens to a ventilated car? Suppose it is delayed? We take our chances when we send fruit ventilated, just the same chance.

735 Commissioner Prouty: If the fruit were unreasonably delayed even if shipped under ventilation, you would have an action for damages?

Mr. Call: We would have an action caused by delay, the same as under refrigeration.

Commissioner Prouty: In the case of a ventilated shipment the damage could not be prevented, but in case of a refrigerated shipment if it were in charge of the railroad company it could be prevented by opening up the bunkers and filling them with ice, ought not the railroad, if it is obliged to assume any responsibility, to have charge of the car insofar as that they can open the car and fill the bunkers with ice?

Mr. Call: I think that may be true if they assume any responsibility, but our position is under the law of the land we have a right to assume that responsibility and we want to do it. We want to take that responsibility because our percentage of loss would be much less than the refrigerator charge, and such a trivial amount that we want to have the billing so fixed that we take the full responsibility.

Commissioner Prouty: Your position is this, that while you would be glad to have the railroads establish these pre-cooling plants——

736 Mr. Call: Yes.

Commissioner Prouty: And establish a rate for shipments pre-cooled, nevertheless you also ask the right to pre-cool and pre-ice yourselves?

Mr. Call: Yes.

Commissioner Prouty: Assuming the responsibility of damage in transit?

Mr. Call: Yes.

Commissioner Prouty: Upon the theory that the car is not re-iced in transit?

Mr. Call: That is the point exactly, with this amendment to it, that so far as their rate is concerned for pre-cooling we feel that that is not so important if we have the privilege, because they have got to meet our competition.

Commissioner Prouty: I understand that.

Mr. Call: So it is not so important about the rate, if we have the right, matters will adjust themselves.

Mr. Durbrow: I would like to ask Mr. Call one question with your Honor's permission, whether he or the people he represents expect to remain satisfied, they performing the pre-cooling and pre-icing and permitting the car to move forward to destination, or whether they anticipate that it will be their desire to go
737 farther and to re-ice the car in transit themselves and be entitled to perform that service themselves. Is that your expectation, or have you any anticipation of that, or do you desire to do that, or claim it is your right to do that?

Mr. Call: We would like to have that privilege, but it is not in issue here.

Mr. Durbrow: I think it is in issue to this extent, your Honor, that I am advised that some of these shippers have it in their heads to make arrangements to refrigerate their shipments in transit. Now I do not think they have any more right to refrigerate their shipments in transit than they have to pre-cool and pre-ice their shipments, when the carrier undertakes to perform the duty imposed upon it by law. But I want to find out from Mr. Call and want him to be frank here, whether the question is in issue or not, whether they expect to refrigerate their shipments in transit, because that will of course open up a very large question for consideration, and we would like to know that.

Mr. Call: I will say in regard to that, that that is not in issue here.

Commissioner Prouty: I do not know, I think the whole subject ought to be in issue here. To my mind as I think of it now
738 I think the entire question is whether these shipments should receive attention in transit.

Mr. Call: We think they do not need attention except in case of delay and then perhaps to avoid damage somebody ought to have the right to put in some ice, but we would not expect to want to use the privilege of re-icing in transit when it moves on the ordinary schedule, and if they want to pay the damage we will waive the right of re-icing.

Mr. Norton: That goes right to the critical point as to how much responsibility they are assuming; and right here is where will be re-opened their claim bureau which we have been struggling for years to get out of business. We have the claims now reduced practically to a minimum and if we accept these shipments pre-cooled and pre-iced and do not attend to them after they have gone upon the road and need attention, why, we are overwhelmed with claims again. The responsibility they talk of assuming is no responsibility at all.

Commissioner Prouty: It is not any responsibility at all unless you gentlemen can do what we suggested six years ago, fix the time schedule and make a rate for that and assume the responsibility of getting the stuff through.

739 Mr. Norton: We are moving now in eight days, and there will be of course cars which will not make that time

Mr. Call: We look at it the same as a ventilated shipment. We run the risk of ventilation as long as we can in the spring until the weather drives us to refrigeration. On account of the refrigeration charge we take that risk. Now to preserve that fruit they do not claim the right of icing that in transit when it is delayed, but where they delay it and spoil the fruit they sometimes pay the claim and we look upon it in the same way with regard to the refrigerated shipments which we refrigerate ourselves and pre-cool and pre-ice ourselves. We take the risk, we are willing to take the risk. That question of the liability for delays is no different from a ventilated shipment. It would seem to a reasonable man that there ought to be some way for somebody to prevent that loss if it can be done.

Commissioner Prouty: There is a difference for just that reason. In the case of a ventilated shipment, it cannot be prevented unless they get the car along, while in the refrigeration shipment they could open the bunkers and protect it.

Mr. Call: They could in the same way.

Mr. Norton: Not if the bunkers are raised, and we are
740 bringing in those collapsible bunkers now.

Commissioner Prouty: It is hardly worth while to discuss the thing now. I simply wanted to get the claims of the parties now so I may understand the bearing of the evidence.

Mr. Durbrow: I would like to have an expression of Mr. Call's intentions of the people he represents with reference to their refrigerating in transit. It is something we would like to be advised of. It is very material.

Mr. Call: We are not claiming that right now.

Commissioner Prouty: I think the Commission has already expressed itself against it.

Mr. Durbrow: I understand the Commission has, and my idea is as I expressed here yesterday, that the carrier has the right to perform this service because it is made its primary duty to do so, and the Commission has discouraged large shippers or associations such as this from furnishing any of the facilities or instrumentalities which are employed in the transportation of these commodities; and that is why I felt somewhat certain of my position in stating that the carriers had the unqualified right to withhold the right to the shippers of refrigerating or pre-cooling their shipments.

741 Commissioner Prouty: The earliest form of refrigeration I think was the construction of a box which contained the ice and the fruit and it was shipped from Florida in that way. Now I conceived that if a carrier saw fit to construct a box which would hold the ice and the water of the ice melting and deliver that box, ice, fruit and all to you for transportation, it would be your business to take it and transport it?

Mr. Durbrow: I think so.

Commissioner Prouty: And if a car can be pre-cooled and pre-iced and go through without any further attention, I do not see any reason why you could not take that car and carry it through.

Mr. Durbrow: I see a great difference.

Mr. Norton: The difference is he is not handing us his package We take the Armour people's cars that way because they deliver us the whole thing.

Commissioner Prouty: I understand it is your duty to provide a suitable car and if a car of a certain construction is required to handle this business in that way it is your business to provide that car. If the shipment does not require any service in transit I am unable to see why the shippers may not properly pre-cool and pre-ice the car. Of course I am not deciding the question as I have no authority to.

742 Mr. J. H. Call: It seems to me there must be a limit beyond which the carrier cannot insist upon the right to supervise the transportation. Of course they are bound to carry it and they are bound under common law to exercise due care, but suppose a passenger upon a passenger train wants to eat his breakfast before he starts and eat nothing on the train and the company says "Well we furnish dining cars and nine o'clock is our time for breakfast and we are going to charge you for that meal whether you eat it or not;" it seems that is precisely an analogous case.

Commissioner Prouty: Well that is what a ship does.

Mr. Durbrow: But they do not eat on a ship, your Honor.

Mr. Call: And they do not get off.

Mr. Norton: And on our dining cars we do not force a man to eat. If he does not eat he does not have to pay for it. Now, Mr. Maginnis, they have stated the point I was getting at in this question, and I will put it in this way. At this meeting attended by Mr. Ripley was it not protested by those small shippers if the carriers did not provide facilities for re-icing the smaller ones would be overridden by the larger organizations which were able to provide

743 these facilities for themselves and they would be thus discriminated against or else compelled to enter into those organizations? Was that the protest made to Mr. Ripley?

Mr. Maginnis: That is true. There are as I say a great many gentlemen present here who were present at that meeting.

Mr. Norton: And was that the protest under which Mr. Ripley reconsidered and told you to go on with the construction of the pre-cooling plant which you had previously abandoned at his orders?

Mr. Maginnis: Yes, sir. Mr. Ripley's statement was that he wanted to know how much of this pre-cooling business our company would be called upon to do, and he said if it was going to be cut down by the erection of plants all over the country by the growers that he did not want to proceed with the erection of that plant; and then he asked these gentlemen, Mr. Woodford, Mr. Edwards and Mr. Story, who visited him at Santa Barbara to explain why there was such a change in the feeling of the growers, the citrus union, the fruit growers exchange and all the fruit growers were represented there at that meeting.

Mr. J. H. Call: Were you at that meeting and do you know what was said?

744 Mr. Maginnis: Yes, sir, I was, and there was not one word said at that meeting in favor of erecting the pre-cooling

plants by the growers. It was reported to Mr. Ripley there that they did not want to do that, because it was too expensive, that there were something like two hundred packing houses in the State of California and to erect plants at all of them would necessitate the expenditure by the growers of eight or nine million dollars and that they could not afford to do that; that they wanted the railroad to put up the plant. And we had procured at San Bernardino enough land to take care of the entire business of California. We have constructed a pre-cooling plant there with length sufficient to take care of thirty-two cars at a setting, and we can probably take care, if the weather is not too hot, of five different settings in twenty-four hours; and we have the land and can extend this pre-cooling plant to take care of two or three hundred cars a day if it ever becomes necessary to do so. And that was what Mr. Ripley wanted to know, how large a plant it would be necessary to erect to take care of the business that the growers represented to him there that day that they wanted taken care of.

Mr. Norton: Did they represent to him that they wanted
745 the carriers to do all the refrigerating?

Mr. Maginnis: They did.

Mr. Norton: Was there any dissent from that?

Mr. Maginnis: There was not. There was not a word. Mr. Woodford did not say anything at all, Mr. Edwards did not say anything, and Mr. Story just stated that at the time they visited him in Santa Barbara they had not consulted with all the growers.

Mr. Call: On that proposition I want to say this, that there were one hundred of our leading representative fruit growers at that meeting and I can produce that one hundred men to come here and swear that this statement is not true, and I would like to have some limit put upon the number of witnesses on that proposition because it is impracticable to take up the time; every man who was there would come and swear to the contrary because this statement is an absolute falsehood.

Mr. Maginnis: Would you take Mr. Ripley's word?

Mr. Call: No, sir, not if it corresponds with yours.

Mr. Maginnis: It will correspond with mine, I will tell you that.

Mr. Call: I don't know what kind of a deal you and Ripley have,
but I know there were one hundred fruit growers who were
746 there who will testify it is an absolute falsehood.

Commissioner Prouty: Well gentlemen I do not think that would be controlling either way. We hold that no understanding of a rate when it is put in will control the rate afterwards. There can be no agreement as to a freight rate and no understanding between Mr. Ripley and these fruit growers can actually control the situation. What we want to get at is the facts. What I mean by that is the actual situation and what ought to be done. Now it has occurred to me from the very first that the serious question in the proposition which the Complainants make is as to its effect upon the small grower. It seems to me you might create a discrimination there in favor of the larger grower against the small grower. We have not found any difficulty of that sort in the orange traffic either here or in

Florida, but we do find that almost everywhere else, and the thing which we have to guard against most carefully is the permitting of any rule or rate or regulation which puts the small man out of business and puts his great competitor into business. Now it has seemed to me from the first that to allow an individual to construct a pre-cooling plant, while perhaps it ought to be done and while perhaps it must be done, would possibly give that individual who has
747 the means to construct that plant an advantage over the smaller grower who has not the means to construct the plant.

Mr. Call: On that proposition I wanted to suggest that perhaps there is a little difference in this situation than there might be with some other commodities. In this particular instance we have something over 90 per cent of all the people engaged in producing fruit in California and shipping fruit in this case, and they all agree on this proposition without any doubt. In addition to that you have had here Mr. Chase, a very large shipper and Mr. Teague, a very large shipper and Mr. Lyon, something of a shipper, and you can have others, and I do not think you will find in the State of California but one interest which would be opposed to us and that is known as the Citrus Union, which have always taken the side of the railroads; but fortunately now their interest in the State is so diminished that it is nominal, and they do not represent anybody but their own speculative interests, and outside of that Citrus Union I do not think you will find a man in California in the business who would be opposed to allowing the shippers to pre-cool and pre-ice.

Commissioner Prouty: As to what happened at this particular meeting, I recognize the truth of what you say, and the Com-
748 mission habitually declines to hear the testimony after the subject has been generally outlined. Now Mr. Maginnis was present at that meeting and testifies in a general way as to what was said. Mr. Storey was present and he may testify as to what was said there, and we will limit the testimony to that.

Mr. Call: Very well.

Mr. Maginnis: Mr. Barnwell is also here who was present.

Commissioner Prouty: Well a great many men were present but we have to stop somewhere; I cannot sit out here all summer.

Mr. Norton: They are ready to keep anybody here who will stay. Now Maginnis, leaving that part of the inquiry I want to ask you whether you have examined this contract or so-called contract which has been submitted by the Complainants, with the Los Angeles Ice Company?

Mr. Maginnis: I have.

Mr. Norton: I would like to pass by this contract by just reading this; it is made by an exchange of letters. I would like to pass it by by reading this paragraph into the record, coming from the Los Angeles Ice & Cold Storage Company to B. A. Woodford, dated February 15, 1910:

"There will be no obligation on your part to furnish us
749 with any stated amount of business nor on our side any guarantee or obligation as to the total amount of pre-cooling and icing we can do."

Mr. Call: The whole record or correspondence I think is in the record.

Mr. Norton: Yes, but that is the joke of the contract.

Commissioner Prouty: Mr. Norton's point is that they were agreeing simply to sell their surplus production.

Mr. Call: I understand.

Mr. Maginnis: That is the idea, the contract provides that if they can they will furnish them with refrigeration for such cars as they propose to put in there, but it distinctly says there is no obligation on their part to guarantee to furnish any particular amount of refrigeration.

Mr. Call: Does not the letter explain itself?

Mr. Maginnis: No, sir. There is a letter there——

Mr. Norton: We will let it explain itself. Let the language I have read explain itself.

Mr. Call: The only reason for allowing counsel latitude on that is because of the theory the parties had, that the railroads would again circumvent them by withdrawing the refrigeration in
750 transit rate which was then in vogue.

Mr. Norton: Mr. Maginnis says you cannot get the contract, and we are going to prove it.

Mr. Maginnis: They cannot furnish refrigeration there for any large number of cars, for the reason that they only propose to furnish the ice at $2.25 a ton if they cannot sell it at from $8.00 to $12.00 a ton. While it does not mention those figures, that is the price they are selling ice for, and the Los Angeles Ice & Cold Storage Company make up perhaps one hundred tons a day, and if they have left over a surplus which is going to melt in their houses, they can sell it for one dollar a ton, and it only reduces the average——

Commissioner Prouty: What do you imagine it costs the Los Angeles Ice & Cold Storage Company to manufacture that ice?

Mr. Maginnis: It costs them about the same as it costs us at the Roma ice plant, not less than $2.00 to $2.25 a ton. Now they propose here and they say in that letter that it takes ten tons of refrigeration to pre-cool a car of oranges. That is equal to five tons of ice. Five tons of ice at $2.25 would be $11.25; 5 cents a box would be $19.20 for 384 boxes, and that would leave them about $3.20 on the deal or about 1 cent a box for their pre-cooling ser-
751 vice, which they are also giving, also giving space there, that when it is not occupied by apples, eggs or something else in cold storage, and as a consequence the growers get this $2.25 on surplus ice. Of course that costs them with the pre-cooling $32.70 a load.

Commissioner Prouty: Is it your point that the Los Angeles Company could not erect a pre-cooling plant and pre-cool these shipments at 5 cents a box?

Mr. Maginnis: Not without a guarantee of a certain amount of business. They might have business enough that they could afford, to do it, but without any stipulation——

Mr. Call: How does that become material to you, what we get it done for?

Mr. Maginnis: It does not become material to me at all, but it does become material to us if you make a statement that this can be done for 5 cents a box, as Mr. Edwards said the other day.

Mr. Call: But whether we are doing it for more or less is immaterial. We are doing it.

Mr. Maginnis: Let us look at Mr. Edwards' statement for a moment. He said they had pre-cooled about one hundred cars at 5 cents a box, that would be $19.20 for 384 boxes. He said his plant cost him $60,000.00. 6 per cent of that would be
752 $3600.00——

Mr. Call: Are you not mistaken about that?

Mr. Maginnis: No.

Mr. Call: Didn't he say——

Mr. Maginnis: It does not make any difference whether he did or not. You would probably say it was false when I got through anyway, but I want to make the statement. The interest would be $3600.00. 10 tons of refrigeration, that is 5 tons of ice at $2.50, which he said he could make it at at a small plant, would be $12.50. Then his ammonia, salt and other little expenses would be $3600.00; that would be $8,450.00 for the pre-cooling of 100 cars of fruit, or $84.50 a car, or over 22 cents a box. That is without labor or fuel or depreciation. Now I should not be surprised if Mr. Edwards was just as unfortunate in his figures when he said there were only 9 tons of ice consumed between San Bernardino and Chicago. We keep records of that ice and I think the average is something like 16 tons.

Mr. Call: Who do you mean by "we"?

Mr. Maginnis: Our plant.

Mr. Call: Do you keep it all the way through?

Mr. Maginnis: Not all the way through, but we keep it at
753 all our plants and then we ask the others, and averaging the same amount——

Commissioner Prouty: That will all take care of itself. If it is costing Mr. Edwards $84.00 a car to pre-cool his fruit he would not do it a great while.

Mr. Maginnis: Well that is what I say, he cannot afford to do it. And even if he were pre-cooling more than 10 cars a day it would cost him more than 5 cents a box to do it. I know that from the experience I had at San Bernardino. To pre-cool it, it costs me over 35 cents a box, and for every box of fruit which we pre-cooled. Because we did not run regularly, we only pre-cooled a few cars, and we had to keep our engineers right straight through and when we could pre-cool a car we would do it, but we had to pay the engineers and had to buy our fuel and all those expenses.

Commissioner Prouty: Now do you think it costs as much to cool this space as it would to manufacture the ice to cool it by the melting of the ice?

Mr. Maginnis: It amounts to a little more we found; our experience is that it takes a little more pre-cooling, refrigeration, it

takes a little more refrigeration than reduced to ice would
754 pre-cool the car. That is, you start a car from San Bernardino that is hot, filling the bunkers with ice and take it to The Needles. I have seen them come into The Needles with not over 150 pounds of ice in the bunkers of that car. Of course it has cooled the car considerably by that time and by the time it gets to Winslow the car is down to the temperature it can be maintained at the rest of the way through, 35 up to 45.

Commissioner Prouty: That is not quite my question. It appears here there is a reasonable system of pre-cooling by which you can construct a room and by using ice itself provide the cold to create the cold air. That would take so much ice.

Mr. Maginnis: Yes.

Commissioner Prouty: Under the other system you cool directly from the ammonia pipes. Now does it cost as much to cool the room directly from the ammonia pipes as it would to provide the ice to cool it with the ice?

Mr. Maginnis: Yes, I think it costs a little more because there is a certain waste in this cold air refrigeration which you use.

Mr. Norton: The Complainants have the copies of our ice contracts and we will not take much time to go over them. But
755 I wish just to show the difference between the contract I have referred to and one of the contracts under which the Santa Fe gets ice. Tell about the obligations of the two parties, say in the Winslow contract or any of them.

Mr. Maginnis: Well at Winslow our minimum is 10,000 tons of ice.

Mr. Norton: You were required originally to construct a plant there?

Mr. Maginnis: We were required originally to put up a plant there which will furnish 20,000 tons of ice at a certain figure based on the cost of fuel, at $2.70, based on $2.00 fuel.

Mr. Norton: Then that plant must be increased in capacity whenever upon demand?

Mr. Maginnis: It must be increased upon demand and at the time it is increased our contract must be extended to run at least ten years, for the reason that the expense of this plant would come on us and we would have to get even on that and have time enough to get even on that at the price mentioned.

Mr. Norton: Besides these obligations under which you are placed what obligation is the company under as to consuming ice?

Mr. Maginnis: They are under obligations to take at least 7,000 tons at Winslow.

756 Mr. Norton: 10,000 tons per what?

Mr. Maginnis: A year. At Argentine they are under obligations to take at least 20,000 tons.

Mr. Norton: And it must buy all of its ice at your plant?

Mr. Maginnis: Yes, and the maximum at Winslow is 20,000 tons and the maximum at Argentine is 35,000.

Mr. Call: You mean by the year?

Mr. Maginnis: By the year, yes, sir.

Commissioner Prouty: How much are you required to furnish as maximum a day or week?

Mr. Maginnis: The contract reads, if you will examine the contract, it provides that we shall furnish all the ice they need except that we calculate for instance in Chicago we can make so much ice; we are provided with so much storage, and then in February we are to take so much ice, and in March and April, and they can call upon us for any amount we have on hand at any one month they wish. But now at Winslow the railroad company owns the storage and they have not sufficient storage there. We notified them over two years ago there was not sufficient storage there to keep the amount of ice on hand so we could meet their heavier requirements when they wanted two or three or four hundred tons.

757 Commissioner Prouty: Then the railroad company provides storage?

Mr. Maginnis: They do there, but at Argentine we have our own storage.

Commissioner Prouty: You manufacture ice and put it in storage?

Mr. Maginnis: Yes.

Commissioner Prouty: And it is taken out of storage?

Mr. Maginnis: Yes.

Commissioner Prouty: You do not contract to furnish the railroad company so many tons a day or to furnish them all the ice they may require during a particular day or week; you only contract to put so much ice in storage?

Mr. Maginnis: We do contract to furnish them at least the capacity of the plant every day, 75 tons, and all that we may have in storage.

Commissioner Prouty: Yes, you contract with them to furnish them with the capacity of the plant; that is what you want to do.

Mr. Maginnis: Yes, sir.

Commissioner Prouty: And you contract to furnish them whatever you may have in storage?

758 Mr. Maginnis: Yes, sir.

Commissioner Prouty: But if they want more they must take the responsibility and not you?

Mr. Maginnis: Yes, sir, and that is what they did do. They shipped in ice there last year that cost them twelve or fourteen dollars a ton to put it in there.

Commissioner Prouty: Why is that contract any more onerous on you than the contract with the Los Angeles Company? You erect a plant and they agree to take at least half the capacity of that plant. You could manufacture ice profitably at that price and you are under no obligation to make more than the capacity of the plant. I call that a very favorable contract.

Mr. Norton: He is under obligation to increase the plant 50 per cent.

Mr. Maginnis: We are under obligation not only to increase the plant, but under obligation to keep that storage full and furnish them with all the ice we can.

Commissioner Prouty: You are not under any obligation to keep the storage full unless you can keep it full by manufacturing up to the capacity of your plant.

Mr. Maginnis: No, sir; that is true, but we have no opportunity to sell ice at Winslow to outsiders. Our whole output at
759 Winslow does not consume 5 tons a day for outside business which is not sufficient to warrant any kind of a plant being erected. I wish if I may, your Honor, to state that it makes a big difference how much ice you can manufacture as to what you can manufacture it for.

Commissioner Prouty: I know that, and for that reason it seems to me a contract which absolutely assures you that you can manufacture up to half the capacity of your plant is a good contract.

Mr. Maginnis: But you cannot afford to manufacture; if you could not sell more than half the capacity of the plant, you could not afford to manufacture it at the prices named in our contract. Now at Winslow in 1906 they only required 12,640 tons of ice and to make that ice and deliver it to them cost us $3.44. In 1907 they took 16,267 tons which cost us $2.66. In 1908 they took 11,227 tons which cost us $3.56. In 1909 they took 18,300 tons and it only cost us $2.50. Now that is the cost without the depreciation, and the years that we sold there, in 1901 we made a loss of $2,170.00; in 1907 we made a profit of $9,800.00; and in 1908 we made a loss of $3,200.00; in 1909 we made a profit of $12,700.00;
we made a net loss of $5,370.00 and a profit of $22,550.00,
760 or a net profit of $7,180.00 on the four years which we operated there. And I will say in addition to that that we have in Winslow an electric light plant with which we furnish lights to the City, and it does reduce the price of this ice, because we charge out the proportionate amount of fuel for that purpose and the proportionate amount of expense and by having the same laborers in the engine room, we can proportion their expense for the electric lighting and we get it cheaper than if we had to hire special men for that purpose. I was going to say that I do not believe there are any ice companies which keep as accurate accounts as we do of our operations. Now we have here, which I will leave with you gentlemen, if you wish, a statement showing boiler plant labor, engine room labor, tank room labor, storage room labor, car icing labor, salaries, superintendents, water, ammonia, oil, salt, miscellaneous supplies and every bit of expense that is gone to, even to the amount of lubricating oil per ton of ice.

Commissioner Prouty: Still I think you testified that you sold that orange grove to go into the ice business?

Mr. Maginnis: No, I sold that orange grove to get some money to put into this pre-cooling business at San Bernardino, to get a little more money. I did not get near enough then.

761 Mr. Norton: In seasons that the refrigeration drops off and large quantities of the crop move under ventilation as testified to by Mr. Leeds any ice you have provided is left upon your hands and you bear that burden?

Mr. Maginnis: Certainly. Now of course at Winslow it costs us

more money to make ice than probably at San Bernardino, for the reason our coal is higher there. At Kansas City we get coal for $1.40 to $1.45 a ton and we make ice there at Kansas City and the expenses outside of the depreciation only amount to a very small amount.

Mr. Norton: I think that is all I want to ask the witness now.

Mr. Maginnis: And I also want to state with reference to a small plant that we have at our oil camps in Mexico——

Commissioner Prouty: I do not think we will go into that.

Mr. Maginnis: It was only an investment of five thousand dollars but it cost us about ten dollars a ton to make ice there.

Commissioner Prouty: Do you know anything about the cost of manufacturing ice in the East?

Mr. Maginnis: No farther east than Kansas City where our plant is.

762 Commissioner Prouty: I only asked for this reason. I spent a week or ten days taking testimony with reference to the ice business in the vicinity of New York. They cut their ice up the Hudson River for about 25 cents a ton and it costs them about 25 cents a ton more to freight it down on the Hudson to New York; of course there is some depreciation to that, which perhaps amounts to 25 to 50 cents a ton more. The testimony there is that the ice machinery in New York was driving that natural ice out of business.

Mr. Maginnis: Well they cannot do that. I am somewhat familiar with the natural ice business in New York. I had a plant at Neosho Falls, Kansas, and whenever it froze so we could get ice we could put it up for about 20 cents a ton on the bank of the river, but there might be two or three years when it did not freeze hard enough to cut two or three inches of ice——

Commissioner Prouty: We do not have any such years in our country.

Mr. Maginnis: For that reason you can get it much cheaper. But there is no way of manufacturing ice cheaply because you have got to figure how much your fuel and labor cost you. You cannot get an ice engineer for less than $100.00 a month, and that
763 would be a night man and you would have to pay a day man $125.00 a month, and those overhead charges have to come in and your expenses will cost you $1,000.00 more for a small plant.

Mr. Norton: Has not natural ice lost prestige because it is generally regarded as unclean except for refrigeration?

Commissioner Prouty: I do not think so altogether. The artificial ice there is a little better than the natural ice for the reason you suggest, as it is made of distilled water and is absolutely pure; but it was a surprise to me to learn how much ice up in that cold country was manufactured by artificial machines. A large part of the ice used in Philadelphia is artificial ice today and I think the testimony showed some 200 plants in New York City of one sort and another manufacturing artificial ice.

Mr. Norton: Of course fuel and everything is much cheaper there than it is here.

Commissioner Prouty: Yes. We did not go into the cost of

manufacturing and I do not know anything about it, but I simply know the ice machine is coming in and taking the place of natural ice, for what reason I don't know.

764 Cross-examination:

Mr. Call: How much ice do you figure a barrel of oil will make, in the different sized plants I suppose it will vary?

Mr. Maginnis: Yes, sir, it depends, I was going to say, on the size of the plant, but say take a 100 ton plant a barrel of oil ought to on the average at least make a ton of ice.

Mr. Call: I know, but as a matter of fact what does it make, not what it ought to, but what does it make?

Mr. Maginnis: Down here at the Home we made a run there of an average of a ton of ice with three-quarters of a barrel of oil. That is the best we were ever able to do there. Now there may be conditions under which you might even get a little below that by using compound engines——

Mr. Call: Don't the others in an improved plant make a ton of ice to 25 gallons of oil, a 100 ton plant?

Mr. Maginnis: No, sir.

Mr. Call: You don't know of any?

Mr. Maginnis: I don't know of any, and if there are any, I would be glad to see them and find what kind of machinery they have got in, because we claim we have got the best kind of machinery and can make ice as cheaply as anyone and I think our records will show that.

765 Mr. Call: What does you oil cost you laid down at San Bernardino?

Mr. Maginnis: We don't know; we have not contracted, but I think we can lay it down at $1.25 over there.

Mr. Call: From whom do you buy it?

Mr. Maginnis: We have not contracted for it yet. We will not commence operations over there for a month or so.

Mr. Call: What do you pay in Los Angeles?

Mr. Maginnis: It is worth about 70 cents at the wells now.

Mr. Call: Is it not a fact that oil is being laid down all over this country even farther than San Bernardino at $1.10 to $1.15?

Mr. Maginnis: Not on new contracts, but there are old contracts probably for as low as $1.05, but not any new ones being made.

Mr. Call: Are you going into the oil business as well as the ice business?

Mr. Maginnis: Yes, sir.

Mr. Call: Where?

Mr. Maginnis: In Mexico and up in the Bakersfield district.

Mr. Call: Do you furnish oil to the Santa Fe?

Mr. Maginnis: No.

766 Mr. Call: What are your relations to the Santa Fe Road? That is, besides your icing business?

Mr. Maginnis: Well I look after their taxes for them.

Mr. Call: You are what is known as tax commissioner?

Mr. Maginnis: Yes, sir.

Mr. Call: On the payroll of the road?

Mr. Maginnis: Yes.

Mr. Call: How long have you been one of the salaried officers of the Santa Fe?

Mr. Maginnis: 28 years.

Mr. Call: How long have you had their icing contracts?

Mr. Maginnis: 5 years.

Mr. Call: Would you have sold that orange grove to go into the general ice business if you did not have these Santa Fe contracts?

Mr. Maginnis: No, sir, I went into the general ice business in Los Angeles——

Mr. Call: And could not make anything at that?

Mr. Maginnis: Well yes we made something at it because we got good prices for the ice and——

Mr. Call: Don't you know that there are other contracts to furnish ice that are away below the figures you are furnishing
767 it to the Santa Fe Railroad for, good faith contracts?

Mr. Maginnis: No, sir.

Mr. Call: What does the Southern Pacific pay for ice at Los Angeles?

Mr. Maginnis: I don't know. They may have the same kind of an agreement you have.

Mr. Call: Don't you know they only pay $2.40?

Mr. Maginnis: I don't know anything about it, or what kind of contract it is, whether for surplus ice or a steady, straightforward contract.

Mr. Call: What do they pay at Bakersfield?

Mr. Maginnis: I don't know.

Mr. Call: Don't you know the contract there is $2.65?

Mr. Maginnis: I do not. They ought to be able to make it much cheaper at Bakersfield than they can at some other places because their oil is right there and the principal item in the manufacture of ice is the fuel.

Commissioner Prouty: The principal item is what?

Mr. Maginnis: Of cost?

Commissioner Prouty: Yes, is fuel?

Mr. Maginnis: Is fuel, yes, sir. That will figure up generally more than the labor.

768 Commissioner Prouty: So fuel you say would be at least one-half of the expense?

Mr. Maginnis: Yes, sir, practically. Take it in Kansas City, it is not, because we get coal there at $1.40 to $1.45, and our fuel expense only runs between 30 and 40 cents per ton for ice, while our labor expense runs about 80 cents; and the reason of that is we handle so much more ice at that plant than we do at smaller plants that we can handle it for less money per ton.

Commissioner Prouty: Does the Santa Fe pay you for the ice when put in storage or when it goes in the cars?

Mr. Maginnis: They only pay for it when it goes in the cars and we are left for any amount we have in storage.

Commissioner Prouty: That is true even though the Santa Fe furnishes the storage facilities?

Mr. Maginnis: Well they do not except at Winslow, that is the only place.

Mr. Norton: That is true at Winslow?

Mr. Maginnis: That is true at Winslow. In Kansas City we furnish our own storage. We have 10,000 tons of storage there.

Mr. Call: What is the reason that you cannot compete say at San Bernardino in pre-cooling and pre-icing fruit with a small
769 plant located in packing houses throughout the country, what is the reason you cannot get the business?

Mr. Maginnis: Well——

Mr. Call: Suppose you both got a fair chance in the business, what is the reason you cannot get the business?

Mr. Maginnis: Well we probably could.

Mr. Call: What are you afraid of in a rule permitting them to do their own pre-cooling and pre-icing?

Mr. Maginnis: That is something I don't know about, what they are afraid of.

Mr. Call: What are you afraid of?

Mr. Maginnis: I am not afraid.

Mr. Call: What are you fighting it for?

Mr. Maginnis: I am not fighting it.

Mr. Call: Haven't any objections to it as the owner of the pre-cooling plant at San Bernardino?

Mr. Maginnis: Only I do not want it divided up——

Mr. Call: Why should it not be divided up if they can furnish as good service and at a reasonable price? Do you think you can do it cheaper than they can?

Mr. Maginnis: I think we can do it a great deal cheaper than you can.

770 Mr. Call: You can do it as well?

Mr. Maginnis: I think so.

Mr. Call: You think you could get the fruit so it would carry just as well?

Mr. Maginnis: Yes, sir.

Mr. Call: And cheaper than they can do it?

Mr. Maginnis: Cheaper.

Mr. Call: If you have free competition and the growers are permitted to pre-cool and pre-ice their fruit and you have a free competition, don't you think you could do a good share of the business?

Mr. Maginnis: Yes, I think we could——

Mr. Call: By getting your rates down to what they could do it for?

Mr. Maginnis: I think so, but the idea was as I understood, Mr. Ripley did not want to put up a pre-cooling plant there with the understanding that they were to be put up all over the country. He knew the two which were operating then and his statement was he wanted to know how many pre-cooling plants were going to be put up before he decided, what size we would put up at San Bernardino.

Mr. Call: It is not any too big to do the business right?

771 Mr. Maginnis: The one we have there?

Mr. Call: Yes.

Mr. Maginnis: It would be too large if everybody else put in pre-cooling plants.

Mr. Call: Why should they put in pre-cooling plants, if you do it in the proper way and at the proper cost?

Mr. Maginnis: That is what I say. But the experience of the gentlemen who have done it would prevent others from doing it.

Mr. Call: You think if you did it at a fair price and did it well there would not be very many put up?

Mr. Maginnis: Mr. Ripley's idea was that the saving of ice in transit would be sufficient to pay for the pre-cooling; he hoped it would; he said his sympathies were with the growers and he would be very glad if we could do it——

Mr. Call: How long did he say his sympathies had been with the growers?

Mr. Maginnis: They had been with them all the while. The railroad companies get their business from the producers——

Mr. Call: I suppose to the extent of the fruit they could produce his sympathies were extended to them.

772 Mr. Maginnis: Well but he said if the pre-cooling could be done for the saving in ice and no change in his refrigeration charges he thought it would be a very fair proposition, that the growers would get the benefits of pre-cooling without any extra charge.

Mr. Call: What is your deal with him on this pre-cooling plant?

Mr. Maginnis: It is on the basis of so much a ton profit.

Mr. Call: On the basis of so much a ton profit?

Mr. Maginnis: Yes.

Mr. Call: That is, he builds the plant——

Mr. Maginnis: No, he does not build the plant.

Mr. Call: He does not build the plant.

Mr. Maginnis: No, we build the plant. But we built it——

Mr. Call: I thought you said he wanted to know what business was to be done——

Commissioner Prouty: I do not understand for whom the plant was built.

Mr. Maginnis: The plant is built practically for the railroad company and for their purposes, but it is built by the Santa Fe Land Improvement Company.

Commissioner Prouty: What is the Santa Fe Land Improvement Company?

773 Mr. Maginnis: I don't know who owns the stock in it. I presume the Atchison people own a good deal of the stock in it, and this plant is built by them and I am to operate it for a percentage of the profit, after taking out all expenses, which gives the fruit growers a great advantage in the cost of ice at San Bernardino.

Commissioner Prouty: I understand you are to operate?

Mr. Maginnis: Yes.

Commissioner Prouty: What did you mean by that, does the plant contain the refrigeration facilities?

Mr. Maginnis: Yes, sir.

Commissioner Prouty: Then just what do you mean by saying you are to operate the plant?

Mr. Maginnis: Well I provide the men and the fuel and all the expenses necessary to the operation of the plant and oversee it and look out for it, and for that they pay me so much a ton for the ice manufactured and I pay the expenses; I advance the money and pay the expenses of the operation of the plant and that is deducted in our annual settlement.

Commissioner Prouty: They pay you so much a ton for the ice manufactured?

Mr. Maginnis: Yes, sir.

774 Commissioner Prouty: And how do they pay you for the refrigeration?

Mr. Maginnis: The same basis as the ice, calling two tons of refrigeration equivalent to one ton of ice.

Commissioner Prouty: What do you mean by a ton of refrigeration?

Mr. Maginnis: A ton of refrigeration, I don't know just how to explain that to you, but there are——

Commissioner Prouty: How do you measure a ton of refrigeration?

Mr. Maginnis: You measure it by a meter, by the amount of cold air that goes through, so many tons, the same as the ice in cold storage, they calculate that they have so many tons per day of refrigeration, which if a plant will make say like our plant up there, 250 tons of ice a day, that would be equivalent to 500 tons of refrigeration.

Commissioner Prouty: So when you blow the cold air into the fruit car you measure the amount of refrigeration?

Mr. Maginnis: Yes, sir, we calculate to blow about seven thousand to eight thousand cubic feet of cold air a minute into each car.

775 Commissioner Prouty: Do you measure the refrigeration by measuring the amount of cold air? And by telling how cold the air is?

Mr. Maginnis: Yes, sir.

Mr. J. H. Call: You count two tons of refrigeration to one ton of ice?

Mr. Maginnis: Yes.

Mr. A. F. Call: What do you get for the ice under this deal?

Mr. Maginnis: Where, at San Bernardino?

Mr. Call: What do you agree the Santa Fe is going to pay the syndicate for the ice?

Mr. Maginnis: We do not agree on anything. It is the actual cost of the ice plus a profit.

Mr. Call: In figuring your profit you have to take something as a basis for what you are going to get for the ice?

Mr. Maginnis: We take all the expenses for the cost and add a profit.

Mr. Call: Is that the way you find your profit, by taking all your expenses and adding a profit to it?

Mr. Maginnis: The same thing.

Mr. Call: That is not the way we figure.

Mr. Maginnis: I know, you have got a peculiar way of
776 figuring. We take for instance the amount of oil we use, it costs so much money and we put that down; we take the amount of labor we employ in the plant and put that down; storage labor and engineers and all expenses of that kind. Then we take the amount of water that is used and that expense, and the electric lights that are used, that expense, and put that together, and see how many tons of ice we have made, and that costs so much money, which is so much a ton. Then we add the profit to that.

Commissioner Prouty: How much profit do you add?

Mr. Maginnis: 25 cents a ton.

Commissioner Prouty: So they pay you 25 cents a ton?

Mr. Maginnis: They pay me 25 cents a ton.

Commissioner Prouty: If you had said that to start with it would have saved time.

Mr. J. H. Call: When you say "we" who do you mean by "we", on which side are you there, are you speaking of "we", the ice company or "we," the railroad?

Mr. Maginnis: We keep all the accounts.

Mr. Call: Who do you mean by "we"?

Mr. Maginnis: The Gate City Ice & Pre-cooling Company, of which I own all the stock except five shares.

777 Mr. Call: The Gate City Ice & Pre-cooling Company is your company?

Mr. Maginnis: Yes.

Mr. Call: And that company has a contract with the railroad company to furnish this ice?

Mr. Maginnis: On this basis, yes, sir.

Mr. Call: Who are you working for, the railroad company or the ice company?

Mr. Maginnis: The ice company.

Mr. Call: You have a salary also from the railroad company?

Mr. Maginnis: Yes, sir.

Commissioner Prouty: Do you buy the oil from yourself?

Mr. Maginnis: No, sir; wish we could.

Mr. Call: You have a series of bonds issued on that thing, have you not?

Mr. Maginnis: No, sir; not a dollar.

Mr. Call: Are there coupons issued or stock on the plant?

Mr. Maginnis: No. Well there is stock, but the stock is not issued yet, but it will be.

Mr. Call: And under the agreement you are to take up a certain share of it every year?

Mr. Maginnis: No.

778 Mr. Call: You have not charged interest on the cost of the plant every year?

Mr. Maginnis: We charge 6 per cent on the entire cost of the plant and making ice.

Mr. Call: Do you charge any part of the cost of the plant as operating expenses?

Mr. Maginnis: 6 per cent, and we make a lease of the plant and that all goes into the expenses, whatever the amount is, which is not fully agreed upon yet.

Commissioner Prouty: I understood you to say yesterday in running one of these other plants you had to count on using up the plant in ten or fifteen years and charged up a certain amount yearly for depreciation?

Mr. Call: We charge one-fifteenth of the cost of the plant on a fifteen year contract for depreciation, and of course it does not amount to that the first two or three years, it would not run up to that, but for instance at Kansas City we blew out a cylinder head there——

Commissioner Prouty: Never mind the details, I do not care whether it is right or not, but what you do is to charge against your plant one-fifteenth of the cost of the plant?

Mr. Maginnis: Yes, sir.

779 Mr. Call: How many cars does the Santa Fe ice during the course of a year there at San Bernardino?

Mr. Maginnis: I could not give you that accurately, but Mr. Barnwell could tell you that probably.

Mr. Call: About twelve thousand, is it not?

Mr. Maginnis: Practically seven thousand, seven to eight or ten thousand, I don't know what.

Mr. Call: It means about 108,000 tons of ice at that plant.

Mr. Maginnis: No, sir.

Mr. Call: What does it mean?

Mr. Maginnis: We figure there is a minimum in the contract of 60,000 tons.

Mr. Call: But you know you have to furnish about nine tons to the car?

Mr. Maginnis: No, sir, about 9500 pounds, about 4½ tons to the car.

Mr. Call: And about half the cars are iced, are they?

Mr. Maginnis: Well I don't know the percentage. The other gentlemen can give you that exactly.

Mr. Call: And you get 51 per cent of the business, do you not?

Mr. Maginnis: Where?

780 Mr. Call: Your road, the Santa Fe.

Mr. Maginnis: I do not know as we do.

Mr. Call: Do you figure on the number of cars you ice?

Mr. Maginnis: I do not. I do not know anything about it until they come up.

Mr. Call: How many tons do you figure on furnishing at that plant a year?

Mr. Maginnis: A minimum of 60,000 tons of ice. Of course beyond the ice used, tons of refrigeration, which amounts to perhaps three or four tons of ice to the car, to pre-cool the car, you cannot——

Mr. Call: Without any expenditure for capital there, they furnish the plant for you and your only obligation is to employ the people

and see that it is run and you get a rake-off of about $12,000.00 a year?

Commissioner Prounty: He gets a minimum of $15,000.00 a year.

Mr. Maginnis: No, because when it gets to 40,000 tons it is cut in two then, to 12½ cents a ton.

Commissioner Prouty: Well you get $10,000.00?

Mr. Maginnis: $10,000.00 and——

Commissioner Prouty: And 12½ cents for every ton over 40,000?

781 Mr. Maginnis: Yes, and it makes the ice very much cheaper than any other way I know of.

Commissioner Prouty: Just what services do you render for which you get that minimum of $12,500 a year?

Mr. Maginnis: In the first place I planned the plant and had the plant erected according to my ideas of the most economical way of handling ice and made these pre-cooling experiments for something over two years to determine what benefits there were to be acquired from pre-cooling; superintended the erection of this plant and the management of it.

Commissioner Prouty: For how long is your contract?

Mr. Maginnis: Five years, with the possibility of extension if everything is satisfactory.

Mr. Call: That is all.

Redirect examination:

Mr. Norton: Some question was raised about the ability of the Santa Fe plant to reduce the temperature of a car to freezing or nearly freezing at San Bernardino.

Mr. Maginnis: Well that can be done if it is considered safe. Now I will tell you——

Mr. Norton: I just want to know whether it can be reduced in that plant to freezing?

782 Mr. Maginnis: It can be reduced and frozen solid if necessary because we can blow that air in at zero if it is safe, and the idea was to blow in the air, about the lowest we have ever blown any air into a car was 15 degrees.

Commissioner Prouty: Have you ever made an experiment to ascertain how long it will take a car to reduce it to 32 degrees?

Mr. Maginnis: Yes, sir.

Commissioner Prouty: How long does it take?

Mr. Maginnis: We never tried to reduce a car to 32 degrees by pre-cooling it in the car, but we have in the house; not to 32 degrees, but to 35, which was as low as we thought it safe to go, and it took about forty-eight hours, that is, going in there with the cold air circulation. Some of that fruit was as high as 90 or 92 degrees when it went in, and that would stand a blast of cold air at about 15 degrees for about an hour and then we would reverse it and let it go in from the top and go down through the fruit——

Commissioner Prouty: Your own idea is that the most feasible

thing is to pre-cool the fruit in the car and reduce it to about 45 degrees?

Mr. Maginnis: Yes, sir, about what the ice bunkers when filled with ice will keep the temperature.

783 Commissioner Prouty: Then you would put enough ice in the car afterwards to maintain that temperature?

Mr. Maginnis: Yes, sir, that is it exactly.

Commissioner Prouty: Now if a car is to be treated in that way it is necessary to have the car packed some little space between the boxes in the same way that it would be packed for refrigeration, that is six wide and two high?

Mr. Maginnis: For refrigeration, but there is not much space if you load 384 boxes to the car.

Mr. Norton: Could you load seven boxes wide?

Mr. Maginnis: Well it could be done but I do not think it is practicable. It makes a heavier top load.

Commissioner Prouty: It does not make any heavier top load. You understand that these gentlemen who pre-cool at the plant set these boxes in close together?

Mr. Maginnis: Yes.

Commissioner Prouty: And in that way get in an additional tier, so they put in seven tiers?

Mr. Maginnis: Yes.

Commissioner Prouty: Now you could not put seven tiers in a car and pre-cooled that car, because you must have space be-

784 tween the boxes for the circulation of the air?

Mr. Maginnis: There is always space the way the boxes are shaped, you cannot load without having a space.

Commissioner Prouty: Would you say you could put seven tiers in a car and pre-cool the car?

Mr. Maginnis: I think we could.

Commissioner Prouty: Have you ever tried that?

Mr. Maginnis: No.

Mr. Durbrow: We have accomplished that, your Honor, and not only that but we have gone so far as to pre-cool the car to such an extent that it has pre-cooled the insulation itself and brought it right through the boards in the interior of the cars and put it down to the temperature at which the fruit is brought down within an hour and three-quarters. We will have a man here to testify to the fact.

Commissioner Prouty: That is probably the trouble with the insulation.

Mr. Durbrow: No, it is good insulation.

Mr. Maginnis: They have asked me some questions about this refrigeration, but I am not a refrigerating engineer and could not answer, but I see Mr. C. M. Gary is in the house, he is a refrigerating engineer and can answer all those questions for you if you see fit to call him.

785 C. M. GAY, was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Norton: What is your business, Mr. Gay?

Mr. Gay: Pacific Coast Representative of the Vilter Manufacturing Company of Milwaukee, located in Los Angeles.

Mr. Norton: You are engaged in the construction of refrigerating plants?

Mr. Gay: I am.

Mr. Norton: I will ask you to state from your knowledge as an expert in this business what is the depreciation of refrigeration in transit, that is to say, how far would a car travel, pre-cooled and pre-iced, as the witnesses have been testifying here, and what would be the ratio of the rise of temperature, if any one is fixed, by experience?

Mr. Gay: That would depend almost entirely upon the outside temperature of the territory through which it was traveling.

Mr. Norton: Are you acquainted with the country we will say over the Santa Fe from here to Chicago?

Mr. Call: It seems to me that it is hardly worth while to take up time on theoretical computations.

786 Commissioner Prouty: That is probably so, but this, I feel, is one feature of the case upon which the Commission needs some information and has the least knowledge, and for that reason I will allow it.

Mr. Norton: I am going to be very brief. I thought perhaps your Honor would ask him more questions than I would.

Are you acquainted with the region and climate of the country through which the Santa Fe runs between here and Chicago?

Mr. Gay: I am.

Mr. Norton: What would you say about the carriage of a refrigerator car loaded with oranges, pre-cooled and pre-iced as the witnesses have described, from here to Chicago in the month of July?

Mr. Gay: If properly pre-cooled and pre-iced, it would, of course, depend upon the temperature which it encountered on the way. Of course I do not think it is possible to pre-cool and pre-ice both and get fruit through to Chicago in the condition that it should be safely; it would not be a safe proposition. With the pre-cooling alone, it would be a different matter altogether. That involves, however, the question of change in the rise of temperature in the fruit itself.

787 Mr. Norton: How fast would the ice in the bunkers of that car melt at that time of the year?

Mr. Gay: After it had been pre-cooled or simply iced?

Mr. Norton: After being pre-cooled and pre-iced, how fast would the ice melt?

Mr. Gay: At the same rate it would on re-icing. The pre-cooling establishes or is supposed to establish a carrying condition; that is all pre-cooling is for, it is all it can accomplish, and the ice maintains that position.

Mr. Norton: As the ice melts out, of course then the condition of temperature with which the car started ceases and rises?

Mr. Gay: Rises, certainly.

Mr. Norton: Have you in your experience studied the condition of the refrigerated product, the fruit or any other product after the temperature begins to rise?

Mr. Gay: I have.

Mr. Norton: What is that condition?

Mr. Gay: When a rise is sudden or over too great a number of degrees, the tendency is for a percentage of moisture to collect on the colder object. For instance, we would pre-cool oranges or any other fruit, or cold store them; pre-cooling seems to be mixed
788 in a great many men's mind with cold storage, and seems to be regarded as identical in some respects as regards temperature. The tendency toward collecting moisture is the thing we have to avoid after a product is once cooled to a given temperature. A rise in temperature causes precipitation of moisture upon the colder object. You will have an illustration of that here if you have a pitcher of ice water on the desk; the warm air coming in contact will precipitate moisture upon the pitcher.

Mr. Norton: Would that lead to decay?

Mr. Gay: Naturally.

Commissioner Prouty: If you take a car and reduce the temperature to 34 degrees, the contents of the car and temperature of the car, so that the whole temperature is 34 degrees, and shut it up, just hermetically seal it, as that temperature rises, do you say that moisture will collect on the colder oranges?

Mr. Gay: It will if the air which produces that higher temperature has sufficient difference to reach the dew point in the contact. The air that comes in from the outside——

Commissioner Prouty: But there does not any air come in from the outside; it is hermetically sealed so no air can come in.

789 Mr. Gay: That is impossible; I have made tests of refrigerator cars on the Santa Fe System, and while they may have bum cars, I never have found any that would stand half an inch or an inch of pressure without losing 800 feet of air per minute by having it come in contact with the ends; theoretically they are hermetically sealed, but as a matter of actual fact, they are not. The amount of air which passes in and out of those cars under any considerable amount of pressure which is maintained in the speed of a train passing across the continent is a very considerable item, and it comes in contact with that ice in the bunkers largely at the end, and passing over that ice is reduced in temperature at that time. If the car was absolutely hermetically sealed and there was no transmission of heat through the car, there would be no necessity for icing the car, and it would not melt out of the car. We have got to account in some way for the reason the ice melts in the car——

Commissioner Prouty: Oh, well, wait a minute. You would not say exactly that. If you were to take a retort and fill it up with ice, you could hermetically seal that?

Mr. Gay: Yes.

Commissioner Prouty: Could you not melt the ice?

790 Mr. Gay: Sure, but if the retort was perfectly insulated, you would not.

Commissioner Prouty: Why certainly you could not if it was perfectly insulated, but there is no such thing as perfect insulation.

Mr. Gay: It is not practical.

Commissioner Prouty: Some amount of heat would go through even if no air goes through?

Mr. Gay: Yes.

Commissioner Prouty: Unless air comes in from the outside there is no moisture in that car to collect on the oranges, but you say the air does come in from the outside.

Mr. Gay: The air does come in from the outside.

Commissioner Prouty: As a practical proposition?

Mr. Gay: Yes, sir.

Commissioner Prouty: And of course the warm air would contain the moisture which I suppose would collect on the oranges?

Mr. Gay: Yes, sir.

Commissioner Prouty: How long do you say as a practical matter that the ice would remain in the bunkers of the car? Suppose the car were shut up and the bunkers filled with ice and started

791 from here to Chicago, would there be any ice in the bunkers when the car got to Chicago, if the car was cold to start with?

Mr. Gay: I think not, in the summer temperatures.

Commissioner Prouty: So that it is your opinion that it is not a practical thing to pre-cool and pre-ice a car without subsequent icing, and for that there are two reasons, as I understand. In the first place, the ice might get out of the bunkers and the temperature might rise, and as the temperature rises it produces an ill effect on the fruit; that is, you have to maintain the same temperature during the whole journey?

Mr. Gay: It is desirable.

Commissioner Prouty: Now, some years ago the Commission made some experiments as to the handling of refrigerator cars filled with strawberries from South Carolina. The temperature down there is pretty warm. I think those strawberries moved in late April and May. There were some 2000 cars, as I remember it, shipped that season, and we ascertained the quantity of ice which was put into each car. Now, this thing turned out to be true, that as those cars began to come back from the north, the bunkers were found to be partly filled with ice when they got back. The car would go to New York, would be unloaded and would be sent back to

792 Chatham, and when it got back there it would contain frequently 2000 pounds of ice. How would you account for that?

Mr. Gay: There are years in which they have to warm refrigerator cars in order to get the product through without freezing.

Commissioner Prouty: They do not have to do that when they raise strawberries.

Mr. Gay: And when strawberries commence growing in the

south, I have handled the crop in southern Missouri, and at that time it is still fairly cool in the north. Strawberries themselves have no great amount of specific heat, and it requires comparatively little refrigeration to reduce the temperature, although they carry better at a low temperature; at the season of the year in which strawberries are going from the south, it would naturally be cool in the north. I presume that was the result. I have seen a car go to New York and back from southern Kansas or southern Missouri at some seasons and have considerable ice in the bunkers, of the original ice, upon return; but that was entirely owing to the season.

Commissioner Prouty: What would you say as to peaches, do they require much ice?

793 Mr. Gay: No, they are easily cooled.

Commissioner Prouty: Do oranges require much ice?

Mr. Gay: Oranges are resistant to cooling more than any of the smooth skinned or deciduous fruits.

Mr. J. H. Call: Then when they are cooled they would be more resistant to the heat also, would they not?

Mr. Gay: They would.

Cross-examination:

Mr. F. A. Call: What experience have you had in the shipment of oranges under refrigeration?

Mr. Gay: I conducted the experiments for the Santa Fe at their San Bernardino plant in 1907 and 1908. I think it might have been the spring of 1908. I had shipped oranges in prior years in New York with and without refrigeration to Buffalo, but——

Commissioner Prouty: Do you know the amount of ice which was required for those shipments after they had been pre-cooled at San Bernardino?

Mr. Gay: I saw the report of the amount that was used, but I have not that report at hand, and have not it in mind so that I could give it. There was a considerable saving on the ice required as compared with cars which were iced without pre-cooling

794 upon the same date and shipped. My recollection is at the present rather vague upon that, but I could possibly refresh it and say about what that per cent was.

Mr. Call: You have never investigated temperatures at different points along the line, have you, in pre-cooled cars?

Mr. Gay: No, I have not.

Mr. Call: And your experiments there were based upon reducing the load to a temperature of about 45 degrees?

Mr. Gay: Between 40 and 45 degrees.

Mr. Call: Did you ever examine the government records found in Mr. Powell's report?

Mr. Gay: I have.

Mr. Call: Found on Pages 62 and 63 and 64 and 65 of his report?

Mr. Gay: I have, heretofore.

Mr. Call: How do your experiments compare with his?

Mr. Gay: Mr. Powell's early reports were the basis upon which I started my experiments, and secured refrigerating engineering data.

Mr. Call: You noticed on Page 63 of his report, if you are familiar with it, that his record shows the maintenance of almost an even temperature in that car all the way from California to Jersey
795 City without any re-icing, and with the great changes in the temperature all the way from 74 degrees——

Mr. Norton: What season of the year was that?

Mr. Call: This particular car, March and April, 1907.

Mr. Norton: It would go under ventilation at that time, would it not?

Mr. Gay: That is the ventilated season.

Mr. Call: The record shows, however, the car going through a temperature of 74 degrees and maintaining an equilibrium of 40 degrees.

Mr. Gay: For how long did it pass through that temperature of 74 degrees?

Mr. Call: I don't know that I could say how long from this record.

Mr. Gay: It would be very interesting to know how long it maintained that or was in that outside temperature.

Mr. Call: Well, the result of pre-cooling a car of oranges would be a greatly diminished quantity of ice used, would it not?

Mr. Gay: It would.

Mr. Call: And the colder the load when it started, the less ice it would require, would it not?

796 Mr. Gay: True.

Mr. Call: And a load reduced to say 33 or 35 degrees minimum in the center of the central boxes in the car packed solid would be to hold down the amount of ice consumed greatly below the experiments you conducted, would it not?

Mr. Gay: So far as the center oranges in the car, if they were insulated from the outside, yes.

Mr. Call: But the cooling of that car to the low degree would greatly lessen the amount of ice consumed on the way, would it not?

Mr. Gay: No, it is the cooling of the fruit, not the car.

Mr. Call: The cooling of the fruit, yes, I mean the cooling of the fruit.

Mr. Gay: Shall I give you the basis of comparison?

Mr. Call: If you will, yes.

Mr. Gay: Well, about refrigeration, we take as a unit of refrigeration a British thermal unit of refrigeration, and in the meltage of one pound of ice, you have practically 142½ units of heat absorbed by that pound of ice, in reducing it from the crystal-ine state, or from ice, to water, after it becomes water. In the meanwhile, you have not changed the temperature of your water; if your
797 water is 32 degrees, your ice is 32 degrees; but you have absorbed 142 units of heat into this ice to produce water. In other words, we will say it has to take up that much heat to change from the solid to the liquid state. After this ice becomes water in normal conditions, if you wish to raise that one degree in temperature, or wish to absorb heat into it, one British thermal unit will raise that one degree, and for every degree, one British thermal

unit. Now, if you want to take ice-water and place it in your bunkers at each end and attempt to cool your car with that, you would fail entirely, because the possibilities of the absorption of heat are exhausted practically when the ice turns to water. The latent heat of the ice or of the water in ice form is tremendous, 142½ units for every pound of ice, while the latent heat of ice water is only one unit for every pound of water for each degree, consequently your ice water would be worthless for carrying fruit through from California to New York; you would not think of filling your bunkers with ice water. Now, we will compare your ice water with your fruit itself. My experiments develop the fact that the specific heat of oranges—I did not try lemons, but probably they are about the same—was approximately between 70 and
798 75; 70.75; that means that the specific heat of your orange is only three-quarters of what ice water would be, not ice. Reducing that again to a question of refrigeration involved in carrying these fruits through, we would have three-quarters of your lading, say your load is 30,000 pounds, three-quarters would be 22,500, the equivalent of water reduced to a given degree to carry through to its destination. Every pound of that 22,500 equivalent would take one British thermal unit for each temperature raise, while every pound of ice which was melted in your bunkers would require 150 thermal units to change it into ice water From that you can understand readily how impossible it is to take a commodity of any kind under ordinary insulation, and under ordinary conditions and cool it in California and expect it to reach New York without refrigeration, or Chicago, or any of those points. The specific heat is so low you cannot store by refrigeration—I will give you an illustration as to——

Mr. Call: We are not talking about that proposition, but simply about the proposition of pre-cooling the fruit through and through to a 33 degree temperature or 35 degrees, filling the bunkers with ice, to cool any air that may come into the car, so as to
799 prevent any raising of the temperature of the fruit. That is the proposition. We do not claim that you can pre-cool fruit without ice and send it to New York during the heated season. The question is, when you fill your bunkers with ice, then what is to raise the temperature of your fruit?

Mr. Gay: Nothing until the ice commences to be exhausted, when the surface of the ice is too small.

Mr. Call: What should exhaust the ice when your load is cold as ice water and your bunkers are filled with ice?

Mr. Gay: The extraordinary heat permeating the insulation——

Mr. Call: Well, it is a question of judgment as to whether the cars are leaky enough to let in air to warm up that load.

Mr. Gay: Ordinarily it is a question of judgment. In our case we tested those cars to find out how much they would leak air.

Mr. Call: But you did not ever test them by putting your fruit down to 33 or 35 degrees?

Mr. Gay: No.

Mr. Call: And then filling up your bunkers with ice?

Mr. Gay: No.

800 Commissioner Prouty: His proposition is he takes a certain amount of refrigeration to carry a car from here to New York, and that refrigeration must come from some source. In ordinary refrigeration it comes from the melting of the ice. In case of a pre-cooled shipment it comes partly from the melting of the ice and partly from the warming of the oranges. Now, he says oranges do not contain cold enough to refrigerate the car; that their effect on the refrigeration of the car is practically insignificant, so that you still have to have the ice. Now, our experiments and investigations in reference to the refrigeration of peaches and strawberries showed this, that the important thing was the initial icing. As they load the strawberries and peaches the car is iced first. It is then placed for loading and loaded, and after it is loaded it is iced again. There is the initial icing and the initial re-icing; and it took as much ice to initially ice and initially re-ice as it did to send that car forward to New York and Boston, and rather more. Now, your pre-cooling takes the place of the initial icing and initial re-icing, but does not take the place of the subsequent re-icing?

Mr. Call: That is the point, only we get a great deal below

801 that point. You take the original icing and first re-icing and you have not brought the fruit down within ten degrees of where we put it at the beginning.

Commissioner Prouty: I know, but he says those are of no special consequence, because if you get down that ten degrees it does not absorb much heat in rising ten degrees.

Mr. Call: Perhaps he did make that statement, but if he does, it is the theoretical against our practical result. I did not understand him to say that. I thought he said it would take much less ice if it was reduced down ten degrees lower than he reduced it.

Commissioner Prouty: He showed how much less. Say 15 tons, suppose there were 15 tons to the car; in raising 10 degrees, that absorbs so much heat, but the quantity of heat absorbed by that fruit in raising ten degrees would be less than the quantity of heat absorbed by a couple of tons of ice in melting. That is as I understand it.

Mr. Gay: That is correct.

Mr. Norton: I would like to have your opinion on this: After a car has been refrigerated and fully iced at San Bernardino on the Santa Fe, just iced under ordinary refrigeration, how far will it go before the temperature is down to that degree which will

802 be evenly maintained by re-icing subsequently?

Mr. Gay: Well, there are some seasons of the year in which it would never attain that degree with one icing. There are seasons when it would melt down——

Mr. Norton: No, we are going to ice it at every station along the road, if necessary.

Commissioner Prouty: The testimony has been it would reach that point about the time it got to The Needles, as I remember it.

Mr. Call: The Needles is the first place of re-icing, and Winslow is the second.

Mr. Norton: My understanding was it was Winslow. Did you understand the question, Mr. Gay?

Mr. Gay: Please repeat that.

Mr. Norton: A car iced and re-iced, and re-iced again, after it is thoroughly cool, will maintain a certain temperature inside. We will start out with the bunkers filled with ice. Where will that car get to on the Santa Fe before the heat of it has been reduced by this icing down to this uniform temperature, say of 45 degrees?

Mr. Gay: About 50 hours.

803 Mr. Norton: If it is pre-cooled, how far will it go?

Mr. Gay: It starts with that temperature.

Mr. Norton: Now, you offered to make an explanation a moment ago when you were interrupted by counsel, after explaining the fact that oranges have such a small unit of latent heat, I think you put it.

Mr. Gay: Not small; 75 per cent.

Mr. Norton: You started to make an explanation as to the effect on the atmosphere or the effect of the atmosphere. Do you want to make that statement? I don't know what you were getting at.

Mr. Gay: I was going to say that if you cooled your fruit to a lower temperature than the carrying temperature with the intention of making that go farther on that account, it would be dangerous on account of the fact that you must raise that temperature, and in that raising of the temperature there would be a tendency toward the precipitation of moisture. But——

Mr. Norton: That is all.

Commissioner Prouty: He has already stated that.

Mr. Durbrow: It is possible, is it not, to pre-cool fruit to

804 as low a temperature as desired, even to the freezing point?

Mr. Gay: Yes, sir.

Mr. Durbrow: What, in your opinion, is the proper temperature to which fruit should be brought in pre-cooling it for shipment across the continent?

Mr. Gay: As nearly as possible the carrying temperature it is to maintain subsequently.

Mr. Durbrow: What is the freezing point of ice?

Mr. Gay: 32 degrees.

Mr. Durbrow: When the ice is put into the bunkers of a car and the car has been pre-cooled and has been brought down to 40 or 45 degrees, there is sufficient power of refrigeration in that ice to maintain that temperature evenly across the continent, is there not?

Mr. Gay: There is, provided you keep enough ice to give you the proper service.

Mr. Durbrow: I am assuming the car is properly iced in transit. Now, if the temperature is brought down to 33 or 34 degrees, has that ice in the bunkers of the car sufficient refrigeration properties to maintain that temperature to 33 degrees, or does the tem-

805 perature inevitably raise to 40 or 45 degrees, or in that neighborhood.

Mr. Gay: It rises.

Mr. Durbrow: To that neighborhood; and in your opinion, the more scientific way is to refrigerate that fruit by pre-cooling and

bringing it to the point of refrigeration to the same temperature it can be maintained by reason of the storing of the ice in the bunkers, for the reasons you have assigned?

Mr. Gay: That is my opinion.

Commissioner Prouty: What benefit is received from the method of pre-cooling at San Bernardino, where the car is to be reduced to that temperature in about four hours, over what would obtain if you were to fill the bunkers of that car with that ice and let it stand on the side track long enough to bring it to that temperature?

Mr. Gay: The cooling of the fruit in the event that your bunkers were filled and you allowed the ice to melt out, and in melting cool the warm fruit in the car, must be accomplished by a transmission of heat from the ice in the bunkers to the fruit in the boxes. We then come to the means of transmission of that heat, which must be and is practically only by circulation of the air over the ice and in and through the boxes containing the fruit. The car is about
806 seven or eight feet in height and the rapidity of circulation depends upon two elements, first, upon the difference in temperature of the two columns of air, the warm and cold columns of air, the cold column of air going down being the air cooled and flowing down from the ice in the bunkers, and flowing along the floor of the car, and the warm column of air rising to the top and naturally flowing over to take the place of the air which has flowed down through the bunkers. As the car is not a very high receptacle, naturally the current of air is not very swift, because the column is not high. It is not like a smokestack, which makes a swift draught on account of its height, but it is low, and the result is you can only cool those oranges just as fast as that air circulation will of its own gravity circulate over the ice and come back to the bunkers.

Commissioner Prouty: Yes, you said that takes a little more than two days.

Mr. Gay: Furthermore, there is very little tendency for that to penetrate the center of the box. That again comes not by air circulation, but another element, of conduction and convexion, the convexion working only when the oranges are very hot, and conduction at all times, the heat conducting directly from one orange
807 through the others to the outside of the box in a slow current. The result is it takes about two days, during which time there is every opportunity, no matter where the oranges are stored and cooled, through this slow process of development of such things as go to deteriorate your orange.

Commissioner Prouty: It simply comes to this, that your method at San Bernardino reduces the orange to a proper temperature in quicker time?

Mr. Gay: Very quickly; in fact, it does it almost by violence. The force of the air is so great that it enters and passes through the boxes as they are ordinarily packed in a car almost equal with the center as with the outside.

Commissioner Prouty: Your idea is the sooner the orange can be cooled after packing, the better?

Mr. Gay: Absolutely.

Mr. Call: There are one or two questions in that relation. How cold is the blast that you force through that fruit when you start on that fruit?

Mr. Gay: We start with a blast anywhere from zero up. As long as your fruit is thoroughly hot, and your blast is distributed, there is no danger because the heat coming from the fruit and all of the car being warm, and all the fruit being warm, there
808 is no danger of freezing for a given length of time.

Mr. Call: It is like working with a knife around pretty close to a man's vitals, is it not, with that blast?

Mr. Gay: It would be if you forced the air through the boxes from one end to the other in a confined space, but in the system we have there the air comes in at the speed of approximately 8000 feet a minute, and it goes from one end to the other with such instantaneous force that there is hardly time for the natural tendency of the air to sink by its greater coolness to the bottom; in fact that is one thing I had not mentioned about this pre-cooling system as we have adopted or used it, we secure the same temperature at the top as we do at the bottom, a thing that is absolutely impossible in my explanation in cooling with ice, the air flowing by gravity cools the bottom first and slowly as it goes on up, cools the top boxes, the top boxes always being higher than the lower boxes, but in the pre-cooling system we force such a great volume of air through that the top and bottom boxes all get the same cooling.

Mr. Call: How long do you keep this cold blast on the fruit?

809 Mr. Gay: From 3½ to four hours with a constantly rising initial temperature.

Mr. Call: How long do you hold it at a temperature below 15 degrees?

Mr. Gay: Well, it does not stay there any length of time at all. It naturally rises. It would take a plant of unlimited capacity to maintain a temperature of 15 degrees, provided you would take the full capacity of the plant to blow the air in.

Mr. Call: How long do you keep it below 20 degrees?

Mr. Gay: About an hour.

Mr. Call: We think the winter blasts on our oranges below 20 degrees would freeze them.

Mr. Gay: It would not if you had warm oranges and put a blast on for an hour on them.

Mr. Call: You know we have had experience here in the winter of about 25 degrees, which knocks out our crop.

Mr. Gay: Not in an hour.

Mr. Call: Nearly two hours.

Mr. Gay: But a slowly reducing temperature, quite a while. You reduced slowly to the freezing temperature, and while you might not have reached 25 degrees for two hours, you were a good
810 many hours reaching that and a good many hours getting away from it. In this case we come in with a carload hot from one end to the other.

Mr. Call: Are you going to have a surgeon in every car to watch them?

Mr. Gay: We are going to have thermometers in every car.

Mr. Call: Who is going to watch that to see you do not leave it in half an hour too long?

Mr. Gay: Every car will be treated alike.

Mr. Norton: There are indicators in the office?

Mr. Gay: There are indicators in the office, a thermometric column showing the pressure of air going in and the amount returned and thermometric connections extending into the office to be read on the icing platform or cooling platform. Those conditions are thoroughly watched and closely watched. There will be no excuse whatever for freezing anything or injuring the fruit. Injury is not done to fruit by quick change from a high temperature to carrying a temperature above freezing, so long as the temperature is reducing, but it is when it returns from a low to a high temperature that the damage is done.

Mr. Call: Really, as you understand it, this contrivance
811 over at San Bernardino, the way you have it, is more for the purpose of saving the company the melting of the ice than saving the fruit, is it not?

Commissioner Prouty: That is just the way it struck me, that from this plant you secure no benefit except that you cool the fruit a little quicker.

Mr. Durbrow: No, we cool a car at our plant lower——

Commissioner Prouty: We have not heard about your plant yet, but by this method you simply reduce the temperature 44 hours quicker than you would *be* refrigeration, and you accomplish the same thing in the end.

Mr. Norton: And we cool the car quicker than they would, and gain about two days' time on the road.

Mr. Call: It saves ice.

Mr. Durbrow: I would like to ask you if you think, in your opinion, the more scientific way of pre-cooling fruit is to pre-cool the car as well as the fruit?

Mr. Gay: Internally, yes; externally, no.

Mr. Durbrow: I mean internally. That is the method which is followed at the San Bernardino plant of the Santa Fe, of pre-cooling the car as well as the fruit?

Mr. Gay: Yes, sir.

Mr. Durbrow: What is the effect of pre-cooling fruit and
812 putting it into a warm car?

Mr. Call: The effect on what?

Mr. Durbrow: The effect on the fruit? You are not concerned with the cars.

Mr. Gay: It is preferable to have the cars refrigerated before the fruit is put in.

Mr. Durbrow: For what reason?

Mr. Gay: If the cars were warm and un-refrigerated, when refrigerated fruit was put in the tendency would be to collect moisture upon the fruit, that being a colder surface than the air in the car.

Mr. Durbrow: And every tendency to cause the temperature to rise would have a bad effect on the fruit, as you have explained to us here?

Mr. Gay: It would.

Mr. Durbrow: I would like to ask you—I don't know anything about this but want to get the facts—if when a car is pre-cooled and pre-iced and the ventilators or traps are not opened for refrigeration or re-icing in transit, if the gases collecting in that car have the same chance to escape as when the car is re-iced in transit,
813 and if that has any effect upon the fruit. I just want to know that from you.

Mr. Gay: The gases referred to are largely an unknown quantity We get the evidence of those by the odor only. There is a tendency, however, for the same effect or very nearly the effect of ventilation, however, if given in the melting of ice, that is by the circulation of the air. The ice is melted and in melting the water absorbs all of these vapors and odors and carries them off in the drain; that is the tendency with a car that is iced.

Mr. Durbrow: And you think that that has a tendency to improve the condition of the fruit at arrival at destination?

Mr. Gay: I don't know.

Mr. Call: You never experimented any on that line?

Mr. Gay: On the question of vapors, no.

Mr. Norton: Is the plant at San Bernardino belonging to the Santa Fe capable of pre-cooling a car when it is loaded seven boxes wide and two tiers high?

Commissioner Prouty: He said he thought it was. I asked him that question.

Mr. Norton: I did not understand that question was put to him. Now, will that plant reduce the temperature to 32 degrees if that were deemed desirable?

814 Mr. Gay: Certainly.

Mr. Norton: But your idea is that about 45 degrees is the highest carrying temperature?

Mr. Gay: The highest carrying temperature.

Mr. Call: In your judgment is it better for the fruit that it be iced or cooled as soon as possible after being taken from the street?

Mr. Gay: It is.

Mr. Call: A plant conducted right at the packing house would be more effective than at San Bernardino?

Mr. Gay: The closer the better.

Mr. Norton: That is the point I was going to raise, that this pre-cooling is not for the saving of ice as you suggest, primarily.

Commissioner Prouty: No, I did not say that, but I said so far as I could see the only advantage of pre-cooling as you pre-cool over the present system of refrigeration is that the temperature of the car is brought to the carrying point about 24 hours sooner; in other words, that fruit is refrigerated that much quicker.

Mr. Norton: And that was deemed desirable and we put it in on their desire to have that done.

815 Mr. Durbrow: And I want you to keep in mind also that not only is the fruit brought to refrigeration quicker, but the car is pre-cooled, and that prevents the fruit from rising in temperature.

Mr. Norton: Mr. Maginnis offered to put in a statement here giving the full history of the ice plant to Winslow the Navajo Ice and Cold Storage Company. By the way, I forgot to answer an inquiry about the Santa Fe Land Improvement Company. That is a holding company which owns property in various instances which the railway company cannot hold, and does business which a common carrier is not authorized to do under its charter. I will put this statement in if counsel would like to get some information on the ice business.

Commissioner Prouty: No, I do not think we will go into that.

Mr. Norton: I think I will put Mr. Chambers on next.

(Witness excused.)

816 EDWARD CHAMBERS, was called as a witness, and having been duly sworn, testified as follows:

Direct-examination:

Mr. Norton: State your name and occupation?

Mr. Chambers: Edward Chambers; Assistant Freight Traffic Manager of the Atchison, Topeka & Santa Fe Railway System.

Mr. Norton: Before taking up your regular examination, as I have prepared to make it, I want to call your attention to the statement by one of the witnesses yesterday, I think, that Mr. Ripley's policy, as he thought he heard it discussed, was to impose as a freight rate, all the traffic would bear. I will ask you to state if you know what his policy is and what it has been with respect to these facts?

Mr. Chambers: I do, very well.

Mr. Norton: Briefly state it.

Mr. Chambers: I think it is well known to all the citrus growers that Mr. Ripley has always taken a very deep interest in the industry, and has always been willing to help it out whenever he thought it was necessary. I think that will be accorded to him generally.

Mr. Norton: Did Mr. Ripley's entertaining the opinion that the lemon traffic ought not to bear temporarily a rate of $1.25

817 have anything to do with reducing it to $1?

Mr. Chambers: It did.

Mr. Norton: Do you know whether he reduced it to that rate, although believing it not necessary, to conserve the interests of the growers?

Mr. Chambers: Before the reduction was made it was necessary to have the matter go up to Mr. Ripley personally, and no other official of the Santa Fe road was willing to take the responsibility of making the rate. I explained the situation myself to Mr. Ripley, and it was on Mr. Ripley's authority that the rate was made for the Atchison, Topeka & Santa Fe.

Mr. Norton: Here is a letter on that subject from Mr. Ripley which I would like to read in the record, addressed to W. B. Biddle, Freight Traffic Manager of the Santa Fe, dated September 13th, 1904.

Mr. Call: What relevancy does that have as to the reasonableness of the rate?

Mr. Norton: As to the allegation in the complaint that this is a permanent rate and that it was not ever to be restored to the former rate.

Commissioner Prouty: Mr. Biddle was at that time Freight
818 Traffic Manager?

Mr. Norton: Yes, and Mr. Chambers is familiar with these facts.

Mr. Call: It is a letter from one official to another official of the road.

Commissioner Prouty: That is true, but that might indicate the policy of the road.

Mr. Chambers: I will explain. Mr. Biddle is the official I reported the whole condition to after the conference with the fruit growers and larger shippers in southern California; I reported the condition to him and made a recommendation to Mr. Biddle, and Mr. Biddle was not willing to act on my recommendation and take the responsibility, so he handed it to Mr. Ripley.

Commissioner Prouty: What the railroad did, and not what was in the minds of the officials is probably the important thing, but you may put that letter into the record.

Mr. Call: Before you do that, would you have any objection to putting in Mr. Chambers' statement as to the conditions, along with it?

Commissioner Prouty: Well, he is here.

Mr. Norton: Did you make a report to Mr. Biddle?

Mr. Chambers: You have a copy of my report to Mr.
819 Biddle of the conditions, outlining the conference with the growers.

Mr. Norton: I haven't it with me. Is that a statement you gave me?

Mr. Chambers: Maybe I have it in here. (Producing paper.) Yes, here it is.

Mr. Norton: This is your report to Mr. Biddle?

Mr. Chambers: That is my report to Mr. Biddle, to which Mr. Ripley refers in that letter.

Mr. Norton: After you had conferred with the growers here on the Coast?

Mr. Chambers: Yes.

Mr. Norton: Does this letter show who were in conference with you?

Mr. Chambers: The letter does not show.

Mr. Norton: Well, with what people did you confer, then?

Mr. Chambers: I think the first conference was with the committee of the California Fruit Growers' Exchange. The Commit-

tee, as I recollect it, was Mr. Naftzer, Mr. Dreher and Mr. Scoville and Mr. Little.

Mr. Norton: And after going over the situation here in California, you addressed this letter to Mr. Biddle, headed California Lemon Industry, Los Angeles, California, September 3rd,
820 1904, with your file mark:

"W. B. Biddle——"

Mr. Call: What is the date of the report?

Mr. Norton: This is the date of the report to Mr. Biddle.

Mr. Chambers: I will explain, that is the report of the meeting that was held when the growers asked to have the rate made all the year round, and we had meetings before that.

Mr. Norton (reading):

"Mr. W. B. Biddle, Freight Traffic Manager, Chicago, Illinois, Dear Sir:— August 30th, Mr. Parkyns"——

Who was he?

Mr. Chambers: He was Assistant General Freight Agent of the Southern Pacific.

Mr. Norton (reading): "August 30th Mr. Parkyns and myself at a conference with a committee representing the lemon growers, most of the members of the Southern California Fruit Exchange. This committee asked for the conference for the purpose of presenting to the railroads a request for reduction in the rate on lemons in California points to Eastern points. Their request was that we establish a permanent rate from California to Chicago and the West $1.00 per hundred, lemons, carloads, and to New York and other seaboard points, 75 cents per one hundred pounds.
821 They argued that these rates were necessary to the future of lemon growing in California. The lower rate to New York so as to meet the competition of the foreign lemons there, the higher rate to the further west points because at those latter foreign lemons would have to pay the rate from New York.

The committee also stated that at present California did not produce more than one-third of the lemons consumed in the United States, but that acreage sufficient was set out in California to produce enough lemons to supply the United States within five years; that the struggle now was between California and the foreign lemons for the control of the United States markets. They also stated that the lemon industry so far in California has been unprofitable. Some years very fair returns were received, and perhaps a little better returns the next year, but there would come a bad year that the loss would more than take up the previous profits, so that up to date the lemon business as a whole in California has been unprofitable, and unless something is done to encourage the growers they will let the orchards go back or bud the trees over to oranges.

The opinion of all the members of the committee is that if California lemons can be kept in the eastern markets, and some
822 profit in the business for the growers that within five years they will drive the foreign lemons out of the United States

entirely, and California will produce enough to take care of all the markets.

They are also of the opinion that unless some reduction in the rate is made the lemon industry will go back, and the shipments will be less each year, and finally the foreign lemons will drive them out of the eastern markets entirely.

My observation of the lemon business for a number of years corresponds with what the committee stated in that there has been no profit in the business. The California lemon grower has certainly had his troubles. There is no denying the fact that the weather conditions in the east have a material influence on the price of lemons. Some seasons in the summer the price advances very rapidly and the two months of good prices makes the average for the season fair. This year under the $1.00 rate during the winter months"——

You refer there to the emergency rate previously mentioned?

Mr. Chambers: Yes.

Mr. Norton (reading): —"the lemon growers did fairly
823 well, comparatively, but there was an accumulation of lemons from the surplus over and above the demand which it was expected would find a ready market during the summer months, but so far the price during the summer has been away below the price received during the winter, and the amount of decay in carload shipments has been greater. This is more noticeable in the shipments that moved the latter part of August, and the cause of this is mainly that they were held too long in California. What moved probably latter part of August was expected to be moved in June.

There is no doubt but what the California lemon grower suffers on account of not having sufficient to supply the United States markets. He has attempted to market largely in the west. There is some speculation in handling imported lemons. It is the exception when the New York importers do not have more lemons than the seaboard markets will take and they must seek western markets at any price, and this condition is what hurts the California shipper badly. There is no doubt in my mind that if the California lemon growers do not see some encouragement in the future, they are going to, a good many of them, let the orchards go back. There is no doubt but what the policy best for the railroads is to keep the lemons moving from California, and to do what they can for the Cali-
824 fornia lemons to supply the entire United States markets, which would mean some 15,000 carloads yearly. We all agree, I think, there are sufficient orange trees already set out in California to supply the United States market with oranges, when we take into consideration the Florida oranges, and it is no help to the situation generally to have the lemon trees budded over to oranges, but the question is what to do. Mr. Parkyns and myself talked the matter over considerable, and we did not arrive at a conclusion that we thought would be a solution of the problem.

However, it seems to me that we will have to make the rate $1.00 per hundred pounds apply all year and give the lemon growers to

understand that we will continue it in effect until they secure United States markets.

There is, of course, the danger that the rate on lemons will be used as a comparison or a basis for request for reduction of the rate on oranges, but I think we can defend the lower rate on lemons on account of the competition of the foreign lemons. Such condition does not exist as to oranges. I would not favor a rate to any point in the United States lower than $1.00 per hundred. It is up to us now to give the lemon grower a definite answer as to what we
825 may expect for years to come, and I know that you agree with me that the subject requires very careful thought. I simply give you my views just as it strikes me now and from my knowledge of the general situation from this end. There may appear to you some good reason why the views I have on the suoject will not be the best for us to adopt. As Mr. Sproule and myself"—

Mr. Sproule was what?

Mr. Chambers: Freight Traffic Manager of the Southern Pacific at Chicago.

Mr. Norton (reading): "As Mr. Sproule and myself will likely be in Chicago within a short time, I suggest that we then all have a conference and decide what to do. In the meantime you might be able to gather some information through eastern sources.

I am sending a copy of this letter to Mr. Leeds that he may investigate and report to you what he finds. I am sending you statements that were prepared by the lemon shippers showing prices received for lemons during the past season.

Yours truly,

(Signed) EDWARD CHAMBERS."

cc J. S. L.

826 Mr. Norton: What follows that letter?

Mr. Chambers: Mr. Ripley's letter comes next on that.

Mr. Norton: I read now the letter of E. P. Ripley to W. B. Biddle, dated Chicago, September 13, 1904, regarding the California lemon industry. Mr. Chambers' letter was on the third, and Mr. Biddle wrote Mr. Ripley on the 8th, and Mr. Ripley replies on the 13th:

"DEAR SIR: I return the enclosures received with your letter of the 8th instant, regarding the California lemon industry.

I do not believe that the future success of this industry is dependent alone upon the rates which the transportation companies make, and I have heretofore consented to a reduction in the rate as an experiment for the purpose, if possible, of demonstrating the question.

I note the statement that during the past year, under the reduced rate, the trade has done better, but I do not believe that it has as yet been demonstrated,—nor is there anything in the papers to show that the reduced rate is responsible for the improvement in the business. California ought to produce sufficient of this fruit to

meet the entire demand of our country, but the producer
827 must find some way to preserve the product in storage so that it may be put upon the market in prime condition during the months of greatest demand, which are the warm summer months in the East. Unless this is done I do not believe we can save the industry.

On the other hand, we should avoid doing anything at this time which would discourage growers and lead them to give up the fight; and certainly if by giving a reduced rate for a few years to come we can encourage them to increase their output thus adding a stimulus to a closer study and possible solution of the question, we should make the rate.

The matter is one of large importance to the transportation companies, and I have always felt that some practical way could be found to make a success of it. I shall endorse any arrangement which you and your associates and the representatives of the Southern Pacific Company may agree to as desirable, but I see no necessity for the 75 cent rate to New York, and it is altogether too low.

After you have had a conference with Mr. Chambers and the Southern Pacific people I shall be glad to know your conclusion.

Yours truly,

E. P. RIPLEY."

36150
—x

828 Mr. Norton: Did you have a conference in Chicago following this correspondence?

Mr. Chambers: Yes.

Mr. Norton: I wish you would tell about it.

Mr. Chambers: I had a conference with Mr. Biddle and Mr. Sproule, and we did not arrive at any conclusion at the first conference. We had several. Mr. Biddle finally said to me that I had better go and explain it to Mr. Ripley. There seemed to be some difference of opinion between our own people as to whether or not we should make the rate so low to all the territory for fear of the result to other rates by comparison, not only the orange rate, but the rate on the non-perishable products. And I went again to Mr. Ripley with the subject and went over it fully with him, and got his authority to make the rate.

Mr. Norton: What did Mr. Ripley say and what was said at the conference as to the remuneration?

Mr. Chambers: Mr. Ripley said he had his doubts that he would get the actual cost of handling the product, when we took into consideration that at least half of it, if not more, must move to the territory east of Chicago, and that he has also said that we
829 would have serious objections from our connections, and at that time he had his doubts that he could get the rate put in to all territories, and that there would be objection from the trunk lines particularly, and the Central Freight Association because we were asking them to haul from Chicago to New York for

25 cents while they got 40 or 50 cents at that time hauling from New York to Chicago, on the same commodity.

Mr. Norton: When and where was it decided to give the $1 rate?

Mr. Chambers: When?

Mr. Norton: Yes, and where?

Mr. Chambers: It was decided at Chicago.

Mr. Norton: And at what time?

Mr. Chambers: Shortly after that conference. That is, the instructions were given to put the rate in. It was necessary to interview all the eastern lines before we could give instructions to publish the rate.

Mr. Norton: Tell in a running way about your dealings with the eastern lines to get them to concur in this reduction.

Mr. Chambers: Well, I do not recall everything. We had several conferences with the traffic officials of the lines leading from Chicago to New York.

830 Mr. Norton: I mean did you have serious difficulty in getting them to concur?

Mr. Chambers: We had great difficulty, yes, sir.

Mr. Norton: Did you bring pressure to bear upon them?

Mr. Chambers: Yes.

Mr. Norton: And stern pressure upon some of them?

Mr. Chambers: Well, we argued it out with the principals.

Mr. Norton: And you feel that these initial carriers here compelled that rate for the benefit of this lemon industry?

Mr. Chambers: The California carriers certainly did.

Mr. Call: Was the argument with them over the rate or over the division?

Mr. Chambers: It was over the rate.

Mr. Call: The southwestern——

Mr. Chambers: I was going to tell you as an example on the line to Buffalo on California lemons the proportion from Chicago to Buffalo was 15 cents under the $1 rate, while lemons from New York to Buffalo, I think, at that time were 28 cents, if I recall it correctly.

Mr. Norton: Another question out of the regular order, and that is the extent of Mr. Leeds' supervision of this car line system

831 which he is operating. Mr. Leeds has complete control of the system not only on our own lines, but on the lines of our eastern connections?

Mr. Chambers: Mr. Leeds takes charge of the perishable product when it is put into the car, and follows it through until it is delivered.

Mr. Norton: And the desirability of the separate organization?

Mr. Chambers: I do not see how it could be handled otherwise and give good service.

Mr. Call: Oh, we have no objection to that proposition at all.

Mr. Norton: When the rate was finally determined upon, the rate of $1 on lemons, did you have any conference with the growers and shippers here to let them know that it was to be put in? Did

you have any understanding with them as to how long it would be in?

Mr. Chambers: I talked with all of them after I came back from Chicago and after the rate was ordered published, and perhaps after the rate was in effect, and before the rate was in effect, before going to Chicago.

Mr. Norton: What did you tell them?

832 Mr. Chambers: In fact they had talked lemon rates to me for a good many years before.

Mr. Norton: What did you tell them about the putting in of the $1 rate on lemons?

Mr. Chambers: I told them that rate would remain in just as long as we could afford to keep it there; in fact, the intention was that we would help them out until they had secured their markets, or until the conditions got better than they were at that time. It was our intention to help them out.

Mr. Norton: How long a time did they represent to you it would be necessary for them to conquer the earth?

Mr. Chambers: Well, they said at that time there were sufficient trees set out which would come into bearing in the next five years to supply the entire United States, and they said by that time they would have the markets, and prices would be better, and they could afford the same rate as on oranges.

Mr. Call: You said you would leave it in until the conditions improved or they got markets?

Mr. Chambers: That was our intention, yes, sir.

Mr. Norton: Have the conditions improved?

Mr. Chambers: Yes, sir, the conditions began to improve
833 that very season, and not so much on account of the rate, but on account of the condition of the lemons themselves in which they were arriving in the market, and the water conditions.

Mr. Norton: Has it turned out, in your observation, that the statement in Mr. Ripley's letter that what they needed was to attend to the picking and handling of lemons more than the rate has turned out to be true?

Mr. Chambers: I think their improved methods of marketing the lemons and the methods of handling them in California were more to them than the reduction in the rate we make.

(Whereupon, at 12:30 o'clock p. m. a recess was taken until two o'clock p. m.)

834 After Recess.

EDWARD CHAMBERS, resumed, testified further as follows:

Mr. Norton: Mr. Chambers, the complainants asked us to furnish a statement showing a history of the rates out of southern California on both kinds of citrus fruits, and I will ask you to render the statement verbally.

Mr. Call: I think we have the statement filed.

Mr. Chambers: Just let me see what that statement is which is marked filed.

Commissioner Prouty: Does not the statement filed by the complainants give a correct statement?

Mr. Chambers: It does not cover all the rates. I have a memorandum here which I will put in in addition to it. My record shows that September 1st, 1888, the rate of $1.25 on citrus fruits, carloads, minimum weight, 20,000 pounds, was made effective. The next change was in March——

Mr. Norton: To where did that apply?

Mr. Chambers: That applied to the territory east of the Rocky Mountains from points in California. March 8th, 1894, which is about the time refrigerator cars were introduced into the
835 service, the minimum was changed from 20,000 pounds to 24,000 pounds for shipments under ice. On June 1st, 1895, a rate of $1 per hundred pounds was published on seedling oranges from California points to territory east of the Rocky Mountains.

Mr. Norton: How long was that in force?

Mr. Chambers: That rate expired September 1st, of the same year. January 27th——

Mr. Norton: First, what was this seedling rate put in for?

Mr. Chambers: The seedling orange growers complained about no profit in seedling oranges under the rate of $1.25, and claimed if they could get a rate of $1 they could get into the eastern markets, and I think at that time they said they would displace foreign oranges, but the result was that the navels were going in at the same time, and the final outcome was that the competition of the seedling oranges under the $1 rate reduced the price of the navel oranges that moved under the $1.25 rate, and we had a great many complaints from the navel growers about the publication of that rate.

Mr. Norton: Then the rate was taken out?

Mr. Chambers: I think when published it was made to expire on September 1st, but we had applications for the same rate the
836 following years, I think the following two years; but our experience with the rate at first was such that we did not think it would do any good to make the rate again; in fact, it did harm.

Mr. Norton: What is the next step in your tariff history?

Mr. Chambers: January 27th, 1897, the minimum was changed to 24,000 pounds on citrus fruits, both under ventilation and under ice. November 5th, 1899, the minimum was changed to 26,000 pounds, both under ventilation and under ice.

Mr. Norton: That was an increase of 2000 pounds?

Mr. Chambers: Yes. December 2nd, 1902, the winter relief rate was published on lemons to expire April 30th, 1903. It was afterwards extended until June 1st, 1903.

Mr. Norton: That was made on an application of the growers?

Mr. Chambers: That was made on application of the lemon growers.

Mr. Norton: And was called the winter relief rate?

Mr. Chambers: Yes. December 2nd, 1903, the winter relief rate was again made effective, and expired on May 1st, 1904, and was extended until June 15th, 1904.

Mr. Norton: When this application for the $1 rate was made did

they ask for a 75 cent rate to Chicago and $1 rate to New
837 York?

Mr. Chambers: I think they did. November 1st, 1904, the rate was made effective of $1 on lemons to apply all the year round; in fact, it was not limited to——

Mr. Norton: Mr. Barnwell says I did not say 75 cents to New York.

Mr. Halsted: 75 cents to Chicago and $1 to New York is what you said.

Mr. Norton: They wanted 75 cents to the Atlantic Seaboard?

Mr. Chambers: Yes, sir. February 26th, 1907, the rate on oranges was changed from $1.25 to $1.15 per hundred pounds, in carloads.

Mr. Norton: What date was that?

Mr. Chambers: February 26th, 1907. The next change in the rate was the publication and filing with the Commission of the rate of $1.15 on lemons, which tariff was made to take effect December 6th, 1909.

Mr. Norton: That was the restoration of the lemon rate to the orange rate which you speak of?

Mr. Chambers: Yes, sir

Mr. Norton: Now, Mr. Chambers, has the condition of the lemon industry which existed December 2nd, 1902 when you put in the first winter relief rate remained unchanged, or has it
838 changed?

Mr. Chambers: Yes, it has changed considerably.

Mr. Norton: State in what particular.

Mr. Chambers: In 1902 there was a general complaint made about decay in transit and also in storage, both in California and in the east. I think just about that time some of the larger growers were experimenting on storing in the east, shipping from here, I think under refrigeration, and then putting the lemons under cold storage at Chicago, St. Louis and some other central points, expecting to carry them there until the better markets would come in the east, and then forward them on to different destinations. My recollection is that we fixed the tariff so that could be done, and the through rate protected from points of origin to final destination. The lemons were scattered among a great many growers, these growers who did their own packing, and small packers throughout southern California. Since that time the decay in storehouses in southern California has been practically eliminated. I think from talking with the different growers and packers and with the Government experts, about the highest percentage of decay that we have here is seven per cent in the store houses in California and about three
839 per cent in transit.

Mr. Norton: At the present time?

Mr. Chambers: At the present time, yes, sir.

Commissioner Prouty: What do you mean by decay in storehouses, you mean the loss which occurs between the weighing in of the lemons and the amount of weight out?

Mr. Chambers: The actual loss, as I understand it.

Commissioner Prouty: Seven per cent?

Mr. Chambers: Between what is put in and what is taken out.

Mr. Norton: Can you tell what it was at the beginning of this relief rate?

Mr. Chambers: Well, it was 25 to 40 per cent, and often higher than that.

Mr. Norton: In storage and in transit, too?

Mr. Chambers: Both, yes, sir.

Mr. Norton: In what other respects have the conditions changed which existed at the time the rate was made? Has the carrier improved its methods?

Mr. Chambers: I was going to say the marketing methods were not then as good as they are now. There were a good many shippers competing with each other, and my experience in both the orange business and the lemon business in the early days was
840 that more low prices came from the competition between the California producers and shippers themselves than from any other cause.

Mr. Norton: Your expression is that the success of the business depends more upon their marketing than upon anything else?

Mr. Chambers: Yes, they have concentrated the business now into the large packing houses. I think where formerly there were probably five, six or seven big packing houses packing and shipping lemons in certain sections, they are concentrated now into one large packing house, and the——

Mr. Norton: While the method of handling and the efficiency of storing and also of moving in transit, as well as the method in marketing have improved, have not also the services rendered by the carriers?

Mr. Chambers: Very much improved, yes, sir. The service is very much better generally both in time in transit and in the refrigerator cars, and the character of the car itself.

Mr. Norton: From your statement we are to conclude that the conditions which existed at the time the $1 winter relief was put in effect have altogether disappeared?

Mr. Chambers: Yes, sir. The conditions on which we
841 based the $1 rate in granting that relief have entirely disappeared except so far as the competition of the foreign lemons at the present time.

Mr. Norton: What of the statement made in Mr. Ripley's letter, that he did not believe the relief rate was in reality necessary, although he consented to it? Has the sequel of events justified his statement?

Mr. Chambers: Mr. Ripley always believed that the California lemon grower had more to gain by getting his lemons on the eastern market in good condition, and improving the quality or the grade. You can readily understand that the small shipper could not put up the grades that the large shipper could; he did not have the quantity and in that respect the concentrating of the lemons into the large packing houses has done a great deal to improve the grades.

Mr. Norton: Now, in 1904 when this winter relief rate which has

been in effect I believe two seasons or a part of two seasons—is that correct?

Mr. Chambers: 1904?

Mr. Norton: It had been in effect a part of two seasons?

Mr. Chambers: Yes.

Mr. Norton: And in 1904 as I recall it it was made a
842 rate all the year round?

Mr. Chambers: Yes, sir.

Mr. Norton: What representations were made to you for putting the rate in all the year round?

Mr. Chambers: The representations as outlined in that letter which you read this morning.

Mr. Norton: I do not recall whether we included the competition of the Italian lemon and particularly the rate from the Atlantic Seaboard into the interior.

Mr. Chambers: No. Prior to 1906 before the carriers were obliged under the ruling of the Commission, I think, or under some decision of the courts, were obliged to publish the import rates, the California lemon growers always complained that the rate on the imported lemons from the Atlantic Seaboard to Chicago and other western territory was very much less than the published domestic tariff, and I believe that it was. But after 1906, the domestic rate was applied on the import shipments, and is today.

Mr. Norton: Since the taking effect of the Hepburn law?

Mr. Chambers: Well, I think it was a little prior to the Hepburn law; I think it was in the beginning, maybe in 1905, but it was
around in 1905 or 1906, I do not recollect just the exact
843 date.

Mr. Norton: The carriers concluded then that the import rate would have to be maintained as well as the——

Mr. Chambers: Prior to that time the carriers took the position that the through import traffic was not subject to the Interstate Commerce Act, and that they were not obliged to publish the rate; but I think that was contested out, and I think under the decision of the Court, it was held that they were wrong.

Mr. Norton: Well, the fact that the foreign lemons were thereby getting cut rates, and possibly secret rates and advantages, was put up to you as a reason for putting in this rate in 1904?

Mr. Chambers: Yes, sir.

Mr. Norton: And that was one of the considerations which moved you to put in the rate?

Mr. Chambers: That is one of the things from which they suffered in the western market.

Mr. Norton: That was made effective November, 1904, I believe you stated, the all year round rate?

Mr. Chambers: November 1st, 1904.

Mr. Norton: It was your intention, as I understand it, that
844 the rate from which the lemon tariff has been reduced, would be restored in time?

Mr. Chambers: Yes, sir.

Mr. Norton: That was the talk you had with all growers?

Mr. Chambers: Everybody I talked with.

Mr. Norton: And no other idea was expressed by you or by them?

Mr. Chambers: No, sir, it was never contended by any lemon grower or shipper that we should carry lemons at a less rate than oranges, or that the carrier's service on the lemons was any different than on the oranges.

Mr. Norton: When they made these representations and overtures to you, did any of them make the argument that for any reason a lemon should be lower than an orange?

Mr. Chambers: No, except for the reasons they gave that they needed the help, that the lemon business was unprofitable, and if the carriers would assist them and——

Mr. Call: Let me see that statement that Mr. Chambers made to his traffic manager.

Mr. Norton: Mr. Chambers' letter to Mr. Biddle?

Mr. Call: Yes.

845 Mr. Chambers (continuing): —that if the carriers would assist them to put the lemon industry on its feet, that when it got where it would pay the same as oranges, they would pay it.

Mr. Norton: And that meant that some day the lemon rate would be back to $1.25?

Mr. Chambers: Yes, sir.

Mr. Norton: Instead of the rate now under contest of $1.15?

Mr. Chambers: Yes.

Mr. Norton: What was the effect of the reduced rate and of the change of conditions during the time it has been in effect, so far as introducing the California lemon is concerned?

Mr. Chambers: I think it was in 1905 that the California Fruit Growers' Exchange was organized or re-organized, and they improved their marketing system very much. Just prior to that all of the shippers had attempted to form one organization covering all the shipping firms, I think, in southern California, for the purpose of marketing the entire product; but that I believe was not a success, and the California Fruit Growers' Exchange went back again to their old organization or on the same line; and I think they have improved considerably. Now, they started in then systematically to improve the marketing methods and also to improve con-

846 ditions in California, and I think they also took up Mr. Powell's advice. Mr. Powell came into California in 1905, and he began here in southern California on both the oranges and lemons, that is, in a general way, and the handling of the fruit was one of the first things he took up; and he stated to me, and I guess to all others, that the careful handling meant more than anything else, both of oranges and lemons; so I noticed the improvement began in 1905, and I would state here that on the conditions of the season of 1905 and 1906 and the returns to the growers that year, taken by itself, they would justify us charging the $1.25 rate.

Mr. Norton: You might well then, you say, have restored the rate after those two years?

Mr. Chambers: We could justify it. But prior to that time they had a very hard time of it and lost a lot of money, and it was pretty

hard on the growers, and even though it was growing better all the time, we did not feel as if we ought to advance the rate quite so soon.

Mr. *Chambers:* As I understand, co-incident with this organization of the Exchange and the better marketing methods and
847 the application of Mr. Powell's advice, there was also a shortage of foreign lemons?

Mr. Chambers: Yes.

Mr. Norton: And was that of service in introducing the merits of the California lemon to the eastern consumer?

Mr. Chambers: Yes, it was, that——

Mr. Norton: And has it ever since maintained its position in the market——

Mr. Chambers: I was going to say just then California began to improve in the grades, and improved them, of course, in the safe carrying of the lemons and the condition in which they arrived in eastern markets, and that began to show right away in all the large markets; in fact all of the markets, so that a California lemon, instead of being handicapped as it was before that, became——

Mr. Norton: It was able to fight its way?

Mr. Chambers: It became thoroughly popular and grew right along up to date, and I think now the choice California lemon is one of the highest grades in the market.

Mr. Norton: One of the witnesses stated that in this case.

Mr. Chamber-: That is our reports from everywhere.

848 Mr. Norton: Have you kept in touch with the Government experts under Professor Powell and with the growers, so as to know personally of these changed conditions of which you testify?

Mr. Chambers: Yes, sir, I have talked to Mr. Powell and his assistants a great deal, and Mr. Powell has been of a great deal of service to the carriers.

Mr. Norton: And the better condition of the lemons has been due to better handling and better conditions?

Mr. Chambers: Better handling and better marketing.

Mr. Norton: What do you know about the growth of the lemon orchard area, and has it been continuous all this time?

Mr. Chambers: I think lemon trees were set out continuously—that is, after 1904 or 1905; prior to that time there had been a time when very few trees were set out and the industry was in bad condition; but after 1905 there was nothing that would prevent anybody who was engaged in that business from setting out trees, figuring on the returns that he would get from the growing of lemons, that I could see.

Mr. Norton: That reminds me, Mr. Commissioner, I think there is a statement made in the complaint that was filed in the Federal Court—I would like to have leave to make a copy of that
849 and have it on file, showing the number of boxes and number of acres of lemons in 1904, and the number——

Commissioner Prouty: You mean the complaint filed by the complainants in this case?

Mr. Norton: Yes. In putting in this rate, what did you say to the eastern connections, what inducement did you make to the east-

ern connections to get them to put it in, or what promises did you make?

Mr. Chambers: We told them that the rate would only be in effect for a season or two, and that it was an emergency rate and that in time it would be restored back to the same rate as on oranges.

Mr. Norton: And on those representations they generally acceded to the reduction?

Mr. Chambers: Well, they did not generally accede; first we got on one line and then another, and we had quite a hard time to get all the lines in; and it was not until some months after that we got the rate to apply to all the territory. The Southeastern lines never did come in, they would not come in under that rate.

Mr. Norton: Those that did come in, what has been their attitude since? Have they been exerting any pressure to have the
850 rate restored?

Mr. Chambers: It has been a continual subject at every conference we have had since that date; I do not believe there has been a single conference which I have attended, and I have attended at all of them, but what the lemon rate was mentioned and discussed.

Mr. Norton: As unremunerative. Then you have been kept pretty busy in maintaining the rate?

Mr. Chambers: Kept pretty busy in explaining it.

Mr. Norton: And maintaining it, too. You have maintained it so far. You stated on February 26th, 1907, the orange rate was reduced from $1.25 per hundred pounds to $1.15. Have you any comments to make upon that course of the carriers? That was a voluntary reduction?

851 Mr. Chambers: That was a reduction made on representations made to the California carriers at a conference held here in Los Angeles, that the orange industry was in need of a reduction in the rate, and they gave various reasons for it and convinced Mr. Stubbs of the Southern Pacific and Mr. Ripley of the Santa Fe that their representations were correct.

Mr. Norton: In the light of history and experience, has the orange business been adequately able to pay $1.25 all this time?

Mr. Chambers: I will say as to that, at that time it was stated by the carriers that the rate would be made for that season, that it was an emergency rate that would be made for that season, and that was as long as the Committee were given to understand it would apply.

Mr. Norton: That was the rate on oranges?

Mr. Chambers: Yes, but as that season turned out it was very much better. I think the growers were more scared than hurt at the time. And it was I think on account of the very large crop which was in sight and the bad prices in the beginning of the season; but as the season turned out I believe it was a fairly profitable season, and if the season just before the reduction was made had been
852 as good as the season the reduction covered, I do not think the rate would have been reduced to $1.15.

Mr. Norton: Did you have any difficulty with your connections in getting the orange rate reduced?

Mr. Chambers: We had trouble with the orange rate reduction also. The lemon rate came up again at that time and some of the lines almost demanded that we put the lemon rate at the same rate as the orange rate then.

Mr. Norton: At $1.15, and put the two together?

Mr. Chambers: Yes, sir.

Mr. Norton: Now that is the situation, as I understand it, up to the increase or restoration of the lemon rate to an equality with the orange rate. Have you anything to say about the imposition of the Federal protective tariff on lemons and the action of the railroads?

Mr. Chambers: I do not know that I have. It was——

Mr. Norton: The correspondence that has been introduced I think shows sufficiently your endeavor to increase the lemon rate to an equality with the orange rate before the Tariff Law was passed at all.

Mr. Chambers: I will say for three years back every season the lemon rate came up to me for a recommendation as to whether or not the time had not come to advance it, and I each time
853 talked with various lemon growers around southern California and recommended adjusting it until I think in the year 1908, the year just prior to this last one, it came up again in a conference we had in Chicago and it was practically understood by the California carriers that the rate would be advanced the next season.

Mr. Chambers: Then from the testimony as you give it, I take it that your position is that the railroads from 1902, the time the first reduced rate was put in, down to the present time, accorded to the lemon industry here protection which the Government should have given to it and to the railroads too, for that matter?

Mr. Chambers: Well, the railroads——

Mr. Call: That is a big contract you are getting into, to speak for the whole United States.

Mr. Norton: We feel that if the foreign lemon is coming into a country that maintains a protective tariff, that it was not the place of the railroads to lower the tariff to keep that lemon out. That is what I am leading up to, that Mr. Chambers believes they did, and I believe they did.

Mr. Chambers: We gave them protection when they needed it and could not get it from any other source that I know of.

Mr. Norton: At that time the carriers needed as much
854 protection in carrying along this lemon industry as the growers themselves did.

Mr. Chambers: Well the carriers and growers were in together, that is the way I always looked at it; we were partners in the lemon business.

Mr. Call: It was a rather one-sided deal, was it not?

Mr. Chambers: No, I think we went down as low as the lemon growers did.

Mr. Norton: At any rate, they got protection from the carriers when they did not from the Government. Now, Mr. Chambers, when the rate of $1.25 originally made on both oranges and lemons

was put in, was that established on the basis of the cost of the service?

Mr. Chambers: I should say not.

Mr. Norton: What is your view of the $1.25 rate?

Mr. Chambers: I think we have testified to that in several hearings that have taken place, that the rate originally established was on the basis of market competition; that market competition made the first rate, of foreign oranges against California oranges. Of course at that time the business was very light and the rate on basis of cost in those days would be very much higher than $1.25;
855 in fact, for several years after the rate was made I know the Santa Fe lines did not earn operating expenses on their western end on any of the traffic.

Mr. Norton: And the rate today is sufficiently remunerative?

Mr. Chambers: I should say the rate today is a very low rate for the service.

Mr. Norton: Some inquiry was made of Mr. Leeds yesterday about the elements of value in the rates to which he testified. Is there any other rate in the United States which has the postage stamp application which this rate on citrus fruit has?

Mr. Chambers: There are other California rates but no other citrus fruit rates.

Mr. Norton: Is there any other commodity which avails itself of the postage stamp rate that citrus fruit does?

Mr. Chambers: There are other California commodities but not outside of California.

Mr. Norton: I mean as extensively.

Mr. Chambers: No, not as extensively.

Mr. Norton: It was also mentioned that diversions were made on other things than citrus fruit. Is that done?

Mr. Chambers: Yes, diversions are allowed on all Cali-
856 fornia products, I think everything moving under the eastbound California tariff.

Mr. Norton: But is diversion used on our system extensively on anything else than citrus fruit?

Mr. Chambers: No, the diversions on citrus shipments are very much more than all the others put together.

Mr. Norton: My understanding is that the practice of diverting was invented or devised for this California fruit business. What do you know about that?

Mr. Chambers: Well, we have always agreed with the shippers that the diversion privilege was necessary for them in marketing the product.

Mr. Norton: Anyway, have the competitors of the citrus growers in California any such privilege, either the postage stamp rate or of diversion?

Mr. Chambers: The competitors have no postage stamp rate. I don't know as to the diversion privileges.

Mr. Norton: I believe it was stated in the last case that they have not.

Commissioner Prouty: No, that was one of the things complained

of. In point of fact, however, oranges are shipped up to the Ohio River, and sent along from there to interior points at sub-
857 stantially the rate fixed by the Commission, but they do not enjoy the privilege of diversion in the same way the California oranges do, and there are various kinds of traffic which do now. It may be that all California traffic does.

Mr. Norton: It has been testified that in the last year your service to Chicago has been well under eight days. That is another change in the situation which makes the present order different from when you put in the $1.00 rate?

Mr. Chambers: The time in transit has been improving right along; that is, it is being made more regularly now than in former years.

Mr. Norton: Leaving this history of the rate, unless you want to say something more about the rate——

Mr. Chambers: Nothing else.

Mr. Norton: We will take up the refrigeration question for a little while. I wish you would briefly state the history of refrigeration and the manner of its growth?

Mr. Chambers: Refrigeration?

Mr. Norton: Yes, when did you begin to refrigerate on the Santa Fe?

Mr. Chambers: Oh, in the early history of the business, I think along about 1890 or 1891.

858 Mr. Norton: From the beginning the refrigeration rate was separate from the rail rate?

Mr. Chambers: Yes, sir, in the beginning the refrigerator cars were owned by private concerns; they were not owned by the railroads and the rate was in addition to the freight rate.

Mr. Norton: Has the refrigeration rate been reduced from time to time as well as the rail rate which you have just gone over?

Mr. Chambers: Yes, sir, the refrigeration rate has been very much reduced.

Mr. Norton: Do you remember what it was in the beginning, just by way of illustration, what it was at any former time?

Mr. Chambers: I do not recall the figures; I know it was $75.00 to Chicago. It was something above $75.00 and then it was $75.00 and the present charge is $62.50.

Mr. Norton: Why did the Santa Fe acquire equipment of its own for refrigeration purposes if it did not have it in the beginning, what impelled it to do so?

Mr. Chambers: The Santa Fe began early to supply some equipment. The first equipment in service was short cars, as I remember it about *it about* 30 feet in length. We hired some from private car lines and supplied some ourselves, that is, some that were
859 owned by the Santa Fe Company. The private car lines were operated by the owners, and the Santa Fe cars were operated through a bureau of the Santa Fe road which was later changed, and some other owners came in in addition to the Santa Fe and put additional equipment in. Those cars have been changed since that time; they have been making a better car and putting

a better car in the service, and of course a larger car, until the cars of today.

Mr. Norton: The point I am getting at is, did the shippers complain that the service in privately owned cars was not fair in all particulars?

Mr. Chambers: Yes.

Mr. Norton: And insist upon your providing equipment of your own?

Mr. Chambers: Yes, sir, some years ago they complained about that.

Mr. Norton: My recollection is that the Company invested about $4,000,000 at the first time to meet this desire of the shippers?

Mr. Chambers: Yes, sir.

Mr. Norton: And has ever since handled its own equip-
860 ment?

Mr. Chambers: Yes, sir.

Mr. Norton: Have the Santa Fe and the other California carriers kept up with the growth of this industry and advanced in new equipment and new methods?

Mr. Chambers: I think they have.

Mr. Norton: And kept pace with the Exchanges in their advances in all particulars?

Mr. Chambers: Yes, I think they have the best cars in use in any part of the country.

Mr. Norton: The service given to it is much more costly than that given to ordinary traffic?

Mr. Chambers: Yes.

Mr. Norton: I think I will not examine you at any length on that subject because the Commissioner who is handling this case understands that fully. Now I wish you would explain the refrigerator rate of $62.50, how it was made up and arrived at. Mr. Leeds was interrogated pretty closely as to two or three or four or five or six elements entering into it. I wish you would tell how the rate was made in the beginning and why it was made as it was and so forth?

Mr. Chambers: Some years ago, I do not recollect the
861 exact date now, I think the California Fruit Growers' Exchange it is, now, the same organization, complained about the refrigeration charges as being too high, and they had a conference I think with Mr. Ripley on the subject and maybe with the other car lines; and Mr. Ripley's instructions to me at that time were to find out the cost of refrigeration and to fix our rate accordingly. What he meant by cost was a fair proportion of that part of the car which was constructed specially for refrigeration, and also the cost of the facilities we had to provide along the route for taking care of the ice, and the cost of the service on our own line, that is, the supervision, and the supervision we had to give on the lines of our connections. And on that basis, the figures obtained on that basis, we made the present rate of $62.50 from California points to Chicago.

Mr. Norton: Was that intended to be a profit-yielding rate?

Mr. Chambers: No, sir, just the cost of the service itself.

Mr. Norton: And how do you explain the charge on the ventilator car, where refrigeration is not furnished as being the same—Strike that out.

Mr. Chambers: I think I testified before about the refrigeration charges in another hearing.

Mr. Norton: My question was as to the spread of the cost
862 of furnishing this over all of the equipment.

Mr. Chambers: Certainly we spread over all the equipment in the service.

Mr. Norton: Including the cars when they are used in ventilation as well as refrigeration?

Mr. Chambers: Yes, sir. There is a certain deterioration or damage to the refrigeration services when the shipments are under ventilation as well as under refrigeration, and all those elements were taken into consideration in making the refrigeration rate.

Mr. Norton: That is because the refrigerator cars have to be used in ventilated shipments in consideration of the nature of the equipment?

Mr. Chambers: Yes, sir.

Commissioner Prouty: When these oranges begin to move in the Fall and as they move through the winter, before they begin to move under refrigeration, they move from a comparatively warm country out here to a comparatively cold country in the east. Would it be possible to move those oranges to destination in anything except refrigerator cars?

Mr. Chambers: No. I think they could be moved in cars that
863 are not perhaps so heavy or of such construction as the car necessary for refrigeration. I think a lighter car would protect it.

Commissioner Prouty: You would not need any ice bunkers of course.

Mr. Chambers: You would not need any ice bunkers.

Commissioner Prouty: You would need an insulated car, a tight car?

Mr. Chambers: Yes, sir.

Commissioner Prouty: What is substantially your refrigerator car?

Mr. Chambers: Yes, but not as costly a car, because we have other commodities which move in other refrigerator cars which are not as expensive and heavy as are standard refrigerator cars and move safely as against frost.

Mr. Norton: And not so heavy a car and not so much dead weight?

Mr. Chambers: Yes, sir.

Mr. Norton: When did you enter into the pre-cooling business?

Mr. Chambers: Well, the pre-cooling business is rather a mixed up business and I do not know where I begin or where I leave off. But there were requests made on us to handle pre-cooled and pre-iced
864 shipments without any charge, claiming I think that under the tariff that could be done. But the matter was put up to me and I could not see where we could handle those shipments

except under the rate which we had published, which was the standard refrigeration rate.

Mr. Norton: After they had been pre-cooled by you or by the shipper?

Mr. Chambers: No, even though pre-cooled and pre-iced by the shipper; the shipper wanted that privilege without charge.

Mr. Norton: How did you fix the tariff rate on pre-cooled and pre-iced cars which you did apply; what was it, $30.00?

Mr. Chambers: There was considerable discussion about it as to what was best to be done. Certain shippers wanted to pre-cool their own fruit and pre-ice it, and the question was with us how to allow them to do their own pre-cooling and let them experiment upon it and still not break into our refrigeration service. And out of that grew the $30.00 charge for the pre-cooled and pre-iced car. We felt as though we would like to have the shippers make all the experiments they could to see how the thing would come out finally. I should say the basis of the $30.00 rate was compensation for the use of the car, for the use of the refrigerating devices of the
865 car.

Mr. Norton: And it was predicated mostly on a desire to let them try out their theories?

Mr. Chambers: Yes, sir.

Mr. Norton: I wish you would explain if you can, Mr. Call's reference to the Texas tariff which was made this morning. I never heard of it before myself. Did you hear his statement?

Mr. Chambers: No, I don't understand what Mr. Call means by the Texas tariff.

Mr. Norton: Well, Mr. Call will probably explain that on cross-examination.

Mr. Call: It is immaterial. I simply cited that to show that that first year they did not charge us anything the first year on the Santa Fe, and allowed the pre-cooling to go on and did not charge us anything and did not attempt to re-ice, and I understand they did it under what they called the Texas tariff. That is what we always called it.

Mr. Norton: The complainants put in a number of exhibits at the opening of the case and one purports to show a number of commodities and show tariffs giving lower rates on a number of
866 commodities out of California than are applied on citrus fruit. I will ask you to state what you will about that.

Mr. Chambers: About the comparison?

Mr. Norton: Yes, is the rate on citrus fruits the lowest or one of the lowest, out of California? Or discuss it as you please.

Mr. Chambers: I think it yields about as low a revenue per car as any of the other rates.

Mr. Norton: Are some of the rates mentioned in those tariffs paper rates?

Mr. Chambers: Well, some of them are, yes, sir. There are some rates named on California products that are higher than citrus fruit rates.

Mr. Call: They are all paper rates.

Mr. Norton: They are all paper rates?
Mr. Call: What are they?
Mr. Norton: If they are paper rates, the Commission says they should not be used for comparison.
Commissioner Prouty: Is it a paper rate on vegetables? Do you transport many vegetables from California to the East?
Mr. Chambers: We do celery.
Commissioner Prouty: Do you transport anything except
867 celery?
Mr. Chambers: Celery and sometimes cauliflower and some cabbage and potatoes to Texas points. We did at one time move a great many potatoes into Colorado and to Missouri River territory and some to Chicago, and the rate is to Chicago, but of late years the shipments of potatoes have been confined almost entirely to Texas.
Commissioner Prouty: What is your rate on celery?
Mr. Chambers: The rate on celery I think is $1.05.
Commissioner Prouty: What is it to New York?
Mr. Chambers: To New York it is $1.25.
Mr. Durbrow: $1.25, I believe.
Commissioner Prouty: What is the minimum?
Mr. Chambers: 20,000 pounds.
Commissioner Prouty: Does that move under refrigeration?
Mr. Chambers: Yes.
Commissioner Prouty: And always moves under refrigeration?
Mr. Chambers: Always.
Commissioner Prouty: What is your refrigeration charge?
Mr. Chambers: Our refrigeration charge is somewhat less, I think, than on the fruit.
868 Commissioner Prouty: Do you regard that rate on the whole as *as* high a rate as for example the lemon rate?
Mr. Chambers: The vegetable rate or celery rate?
Commissioner Prouty: The celery rate?
Mr. Chambers: Would I regard it as what?
Commissioner Prouty: Would you regard it as favorable to the transportation company as the lemon rate?
Mr. Chambers: No, I would not.
Comissioner Prouty: Why have you made that celery rate?
Mr. Chambers: We made that to allow the California shipments to go in against competition from other sources of supply. We have tried several times to advance the rate and on the showings they have made we have kept it down.
Commissioner Prouty: What is your rate on apples?
Mr. Chambers: Our rate on apples is $1.00.
Commissioner Prouty: And the minimum is what?
Mr. Chambers: 30,000 pounds.
Commissioner Prouty: You would regard that as a better rate than the lemon and orange rate of course?
Mr. Chambers: Yes.
Commissioner Prouty: How would it compare with your orange rate?

869 Mr. Chambers: The apple rate?

Commissioner Prouty: Yes.

Mr. Chambers: Well, the conditions are different. The apple rate was made on account of the competition the apples had to meet in almost every other state in the Union, the local competition on apples is general.

Commissioner Prouty: In what kind of a car are the apples shipped?

Mr. Chambers: In the regular refrigerator car, the same car that we use for oranges.

Commissioner Prouty: Are they shipped under refrigeration?

Mr. Chambers: Some, and some under ventilation.

Mr. Norton: The celery movement is in the winter, is it?

Mr. Chambers: In the winter season, yes, sir.

Mr. Norton: When less ice is used than on the citrus fruit?

Mr. Chambers: Yes, that is the reason for the lower rate.

Mr. Norton: I think that is all. You may cross examine.

Commissioner Prouty: Before you begin, let me ask Mr. Chambers, from your investigation what do you understand the advantage of pre-cooling to be?

Mr. Chambers: Well, I understood in the beginning that the advantage of pre-cooling was to prevent decay in transit, to
870 cool the fruit quicker than the ordinary refrigeration and then have it maintained to destination.

Commissioner Prouty: Now, there seems to have been some testimony here that refrigeration does not necessarily prevent decay at all; that shipments in hot weather are refrigerated to preserve the appearance rather than the integrity of the fruit?

Mr. Chambers: Well, that has developed in the later years since they got the results they have from the careful handling of the fruit.

Commissioner Prouty: It turned out, as I understand it, that the source of almost all deterioration was some sort of a bruise.

Mr. Chambers: Yes.

Commissioner Prouty: And if fruit is carefully handled so it is not bruised it carries without refrigeration?

Mr. Chambers: Yes, sir, that is the theory, that is what the experts say.

Commissioner Prouty: There is a demand on the part of your shippers for pre-cooling, is there? Your shippers appear to think that pre-cooling is a thing which ought to be provided by someone?

871 Mr. Chambers: Yes, sir, but the shippers first said to me that pre-cooling would prevent decay in transit and also enable them to hold their shipments in the storehouses in California if they so chose, in case cars were short or the markets were in bad condition; and it looked to me as though it was something which was of benefit to the shipper, a commercial transaction.

Commissioner Prouty: They say now if these oranges can be precooled at the plant they can be stored at the plant so that any shortage of cars on your part will be taken care of. That would not be

so if they were pre-cooled at your plant at San Bernardino, would it?

Mr. Chambers: No.

Commissioner Prouty: Because they are pre-cooled in the car itself. So far as I can see the only advantage offered by your system of pre-cooling is a saving in ice and the bringing of the fruit to a refrigerating point, so to speak, some few hours sooner than would otherwise be done, which does not seem to be a matter of great importance one way or the other. Can you see any advantage aside from that in the pre-cooling as conducted at your plant?

Mr. Chambers: The pre-cooling by the carriers was largely
872 brought about by the agitation of the shippers for pre-cooling.

Commissioner Prouty: Well that is the way it seems to me.

Mr. Chambers: And it came about by trying to provide something which was of benefit to all the shippers in providing refrigeration.

Commissioner Prouty: My question is just this, if the charge is the same when the shipment is pre-cooled at your plant as it is when it is simply iced, to what extent and in what manner does it benefit the shipper?

Mr. Chambers: Well, the shipper, as I say—it was brought about largely by the shipper stating that pre-cooling was a benefit to him. They said at the same time also that it was a benefit to the carrier, that it would enable it to load heavier in the cars, they could load heavier in the cars by pre-cooling the fruit safely than under the ordinary refrigeration.

Commissioner Prouty: That seems to be so——

Mr. Chambers: Now, the carriers made the experiments on pre-cooling and found that—they first thought that an additional charge would be made for the pre-cooling service; and it was found on investigation and by demonstration that the cost of pre-cooling
873 on this end amounted to just about the same as the savings of ice in the pre-cooled car to the East, so it was a stand-off, and then it was decided to include the pre-cooling service under the regular refrigeration charge.

Commissioner Prouty: But you are unable to say how that is of any special benefit to the shipper?

Mr. Chambers: If pre-cooling is any benefit to the shipper that is certainly a benefit to the shipper.

Commissioner Prouty: You would not cool your oranges as soon by twenty-four hours as the shipper himself could cool the orange if pre-cooled at the packing house, would you?

Mr. Chambers: From what I am told they can pre-cool it quicker at the pre-cooling station.

Commissioner Prouty: I do not mean quicker, but the orange comes from the tree to the packing house——

Mr. Chambers: Yes, sir.

Commissioner Prouty: And if pre-cooled at the packing house it is packed and the cover is nailed on the box and the box is put immediately into the pre-cooling room?

Mr. Chambers: Yes, sir.

Commissioner Prouty: When it is pre-cooled by you it has to be

packed, loaded into a car and taken to your plant before it
874 is pre-cooled, which will occupy perhaps twenty-four hours, so I say if cooled at the packing house it would be cooled twenty-four hours quicker than *as* if it were cooled at your San Bernardino plant.

Mr. Chambers: Well I understand it would be in the cooling room quicker, but getting it down to the temperature of what they claim is proper pre-cooling, it could be done quicker at the larger plant than at the packing house.

Commissioner Prouty: You reduce the temperature at your plant to about 45 degrees.

Mr. Chambers: That is what they say.

Commissioner Prouty: The testimony seems to be if the temperature were reduced to 35 degrees as it is at these other plants of the packers, it would occupy some thirty or forty hours; that is, in order to cool the entire box uniformly, that box has got to stand in a cold room for some thirty or forty hours. You can bring down the outside of it to that temperature and can bring down the inside to a comparatively low temperature, but if you are going to cool the box through it must stand in a cold room for about twenty-four hours.

Mr. Chambers: There is a wide difference on that, and my opinion is that the entire pre-cooling method is in an experi-
875 mental state yet and the benefits also to come from the pre-cooling method.

Commissioner Prouty: The utility of it has not been fully demonstrated?

Mr. Chambers: No, sir. I would not want to start out on any permanent plan if I was asked for my theories today, and that is really the position of our company. We have gone ahead and put up this pre-cooling plant at San Bernardino, and we expect before going any further to see the results from that plant. Those that have investigated into the matter, the experts that we have employed and others, say they can do certain things, and I believe they can, but it has not been demonstrated by anybody yet; there has not been any practical demonstration of pre-cooling, acording to my ideas of it. Nobody I have talked with has convinced me that there is any merit in it more than to give it refrigeration.

Commissioner Prouty: Well, that is the way is strikes me; there is not the same necessity for pre-cooling in the case of orange that there is in the case of peach. Now, with a peach, as soon as it is taken off the tree, it ought to be put in a cool room; but an orange keeps well for a long time after it is picked.

Mr. Norton: If perfectly handled, Mr. Powell says indefinitely.

876 Mr. Call: It will keep pretty well, but of course it will deteriorate. It is not such a necessity as it is with the peach but we can see it on the market and it has an effect in the appearance; if it has a nice appearance it commands a better price.

Commissioner Prouty: But it is more a question of appearance.

Mr. Call: Yes.

Mr. Norton: We claim we help them get it.

Mr. Chambers: Since this pre-cooling experiment began we have aided them in every way we could. We have done our part with the shippers and government experts, in hauling the fruit around to the various ice houses so they could experiment with it; and I have talked a great deal with Mr. Powell and the others about it.

Commissioner Prouty: If it is true that pre-cooling increases the capacity of a car one-seventeenth, that would be from the carrier's standpoint an advantage, it would add one-seventeenth to the revenue from that car, but you do not secure that at all from your method of pre-cooling.

Mr. Chambers: Well the shippers who have experimented or say they have experimented say the cars can be loaded heavier;
877 that is the statement they make to me. They are willing they should be loaded heavier, but we are not clear yet as to what is best to be done. And the plant at San Bernardino of course is fixed for pre-cooling and also to manufacture the ice and furnish the service in the old way, and what we have attempted to do is to improve the refrigeration service by giving the pre-cooling in the refrigeration rate.

Commissioner Prouty: You may cross examine.

Mr. Norton: Mr. Commissioner, I brought out from the Witness Gay this morning that a load seven boxes wide can be refrigerated at our plant at San Bernardino.

Commissioner Prouty: Why he says so, but you did not convince me that is so for this reason. In order to load seven boxes wide into a car those boxes have got to be placed close together, and there is no room to blow the air through those boxes, and it does not seem reasonable——

Mr. Norton: I understand the boxes are not so very tight, and then he said the air is driven through with force enough to go through the boxes themselves. There is a strong circulation of air goes in at about the rate of 80 miles an hour, which was the speed he gave, and he said it would penetrate.

Commissioner Prouty: I did not understand him to say
878 they had ever actually done it.

Mr. Durbrow: If you would like to spend an hour and three-quarters at our plant we will cool the car and bring it down to 33 degrees, seven tiers wide.

Commissioner Prouty: Of course if you can pre-cool a car loaded seven tiers wide there is an advantage immediately in the pre-cooling system because you increase your load.

Mr. Call: This is a photograph made by Mr. Powell showing the appearance of a loaded car after it was pre-cooled (handing photograph).

Mr. Norton: Mr. Chambers, you stated to the Commissioner that so far as your understanding of this is concerned it is experimental. Can you tell how many cars have been pre-cooled, pre-iced and shipped to destination without further icing over the Santa Fe under orders of the shipper?

Mr. Chambers: Under the rate of thirty dollars?

Mr. Norton: Yes.

Mr. Chambers: I think the statement shows two cars. The cars prior to that which were shipped over the Santa Fe were instructed to be re-iced if necessary and I think they were all re-iced.

Mr. Norton: But the matter is experimental in your
879 opinion and the experiment has hardly been tried at all on the safety?

Mr. Chambers: Yes.

Mr. Norton: That is all.

Cross-examination:

Mr. Call: Do you know about that, Mr. Chambers, whether any of those cars which were shipped with instructions not to re-ice were re-iced by your company?

Mr. Chambers: No, I do not know.

Mr. Call: If so, why didn't you charge for it?

Mr. Chambers: We did attempt to charge for it, Mr. Call.

Mr. Call: But you never made any charge until after the season was over?

Mr. Chambers: Yes, I think we instructed them to be collected on the other end; I telegraphed Mr. Leeds that those shipments were subject to the regular refrigeration charge and if they needed re-icing in transit to do so.

Mr. Call: Do you know if any were re-iced?

Mr. Chambers: I don't know; I understand they were.

Mr. Call: Did you ever have any reports that any were re-iced?

Mr. Chambers: I don't know.

Mr. Call: Will you produce any reports from your in-
880 spectors showing where they were re-iced?

Mr. Chambers: I think we can.

Mr. Call: I should like to have a table of that kind so we can verify it.

Mr. Chambers: The records will show it.

Mr. Call: I would like the original records.

Mr. Norton: Will the Commission take a statement from Mr. Chambers, as he is testifying under oath, showing the records of those cars, or shall we hunt up the original statement? I intended to ask leave to file——

Commissioner Prouty: What kind of a statement from Mr. Chambers?

Mr. Norton: Showing all the cars which have been sent by them, showing instructions not to re-ice in transit and which we have re-iced.

Commissioner Prouty: Yes, he can file the statement, but as I have already said, I think before the Commission decides this case we ought to have some further experiments to know what can be done by this pre-cooling system and those experiments ought to run through the entire season. But if Mr. Chambers knows definitely and is satisfied in his own mind whether those cars
881 were or were not re-iced, he can file the statement showing what cars were re-iced and what were not.

Mr. Norton: Mr. Chambers can tell you that.

Mr. Call: Anything Mr. Chambers says he knows I will take, but anything he has got to guess at I do not want without the original documents.

Mr. Norton: Of course he would not know about that personally.

Mr. Chambers: Mr. Leeds' records will show where the cars were re-iced. He can show on every car.

Mr. Call: Do you have to do with the making of the California rates here quite largely?

Mr. Chambers: Yes, sir.

Mr. Call: Have you in the past?

Mr. Chambers: Yes.

Mr. Call: So that you know the policy and reason for rates I suppose as well as anyone in the system?

Mr. Chambers: Yes, sir, the rates are all made through me.

Mr. Call: Can you give us some idea of the considerations which ought to enter into the making of a rate, according to your judgment?

Mr. Chambers: Well, I think that is pretty well understood.

Mr. Call: Well we are, a good many of us, ignorant on
882 that point.

Mr. Chambers: We have so few rates that are made just that way—there is one thing or another controls almost every rate.

Mr. Call: Well cannot you give us the considerations which enter into it, speaking comprehensively?

Mr. Chambers: The cost of the service given is the main thing.

Mr. Call: The service given, does that mean the cost of the service to you or what you regard the service to the shipper?

Mr. Chambers: The service to the shipper and the cost of the service to us.

Mr. Call: So you take both those elements into consideration?

Mr. Chambers: Yes.

Mr. Call: The cost of the service to you has something to do with it, has it?

Mr. Chambers: It certainly has.

Mr. Call: And what you regard as the service to the shipper has something to do with it?

Mr. Chambers: Yes, sir.

883 Mr. Call: In other words, that is a modernized term for what the traffic will bear?

Mr. Chambers: I do not think so.

Mr. Call: What is the difference between the two expressions?

Mr. Chambers: Well if you will just give me some one commodity I will tell you.

Mr. Call: You cannot define the difference in a general way?

Mr. Chambers: I can tell you what controls the rate on the commodity itself.

Mr. Call: But I mean the considerations which enter into the scheme of rate making?

Mr. Chambers: It is just like any other business, regulated by the prices, I suppose.

Mr. Call: You mean you get all you can in every case without regard to the welfare of the shipper?

Mr. Chambers: I would not like to say that?

Mr. Call: You would not care to say that?

Mr. Norton: The letter we introduced here shows that is not so.

Mr. Call: I did not know but what we might get some
884 light on it as he is an intelligent witness. The cost of traffic does not have very much to do with the making of rates, that is the expense of the company does not have very much to do with it?

Mr. Chambers: It certainly must have. The cost has something to do with——

Mr. Call: It has something to do with it, but it is a very small factor?

Mr. Chambers: It has considerable.

Mr. Call: But your main consideration as I judge from your direct examination is what the traffic will bear. That is the state of competition and what they can afford to pay?

Mr. Chambers: We have a railroad to move freight and passengers and we are entitled to a certain profit, a reasonable profit.

Mr. Call: Certainly you are.

Mr. Chambers: And that is the basis on which we manage the business. There are some rates which are made on the basis of what the service actually costs as near as we can figure out, plus a reasonable interest on the investment. Other rates are below that cost but contribute something to the cost of handling the other freight which reduces the cost on that, and the whole business is worked in together——

Mr. Call: Let us take it from another angle. Your pres-
885 ent management started out with a defunct institution or a revised institution, did you not, a few years ago?

Mr. Chambers: A few years ago, yes, sir.

Mr. Call: Your stock had a nominal value, about 7½ per one hundred dollars, was it not?

Mr. Chambers: I cannot say as to that.

Mr. Call: Well you know the stock was thrown in, was it not, the bonds were issued and stock thrown in?

Mr. Chambers: I don't know as to that.

Mr. Call: And during these few years your stock has advanced to what price now?

Mr. Chambers: I cannot say; I don't know.

Mr. Call: You don't know?

Mr. Chambers: I am not interested in the stock market.

Mr. Call: You have paid dividends right along?

Mr. Chambers: I cannot say as to that. The records and reports will show.

Mr. Call: Entirely out of debt. Do you know how much surplus you have on hand?

Mr. Chambers: I do not.

Mr. Call: It would not surprise you to find thirty million
886 dollars of cash on hand after paying all your debts and dividends?

Mr. Chambers: It would surprise me, yes, sir.
Mr. Call: That is what the President's reports show.
Mr. Durbrow: You do not believe that surplus represents cash on hand, do you?
Mr. Call: That is what it says, cash on hand, $33,000,000.00, cash on hand.
Mr. Norton: Some recently borrowed in anticipation of improvements to be made——
Mr. Call: No, he says he is pleased to say he does not owe a dollar. If you want to be advised on that I will show you the report. Do you know of any rates which you think are a little high in your schedule?
Mr. Chambers: I do not recall any right now. Maybe tomorrow someone will convince me that they are.
Mr. Call: But that is not properly along your line of business. Your part is to jack up those that are a little below the level, is it not?
Mr. Chambers: My business is to get reasonable rates on the traffic.

887 Mr. Call: Your business is to look around and see if you see anybody who looks prosperous and see where you can get a rate on that a little higher, is it not?

Mr. Norton: I object to that line of cross examination of Mr. Chambers. I think he ought to be treated with some respect.
Mr. Call: I am treating him with the greatest respect. There is nobody in this part of the country that I have more respect for than Mr. Chambers, otherwise than the motive that moves him in what he is paid to do. Now referring back to this reduction of this lemon rate, you did not have the idea of putting that rate in as a temporary rate, did you?
Mr. Chambers: I certainly did.
Mr. Call: You certainly did?
Mr. Chambers: Yes, sir.
Mr. Call: And that is the representation made to you, was it, that it was to be a temporary rate?
Mr. Chambers: Yes, sir.
Mr. Call: I notice that you reported it to your superior officer a little differently.
Mr. Chambers: Well it was not limited of course so far as making the rate itself and putting it into the tariff; it was put in as a permanent rate, but the discussion I had with the growers, they did not complain about the rate being excessive in any way.

888 Mr. Call: But here you say in your report of September, 1904 "Their request was that we establish a permanent rate from California to Chicago."

Mr. Chambers: That was an all year round rate.
Mr. Call (quoting): "They argued that these rates were necessary to the future of lemon growing in California."
Mr. Chambers: Yes.
Mr. Call: There was nothing said about it being temporary?
Mr. Chambers: That was the report to Mr. Biddle.

Mr. Call: You were telling him what was said to you and reporting to him exactly as it was?

Mr. Chambers: Yes, sir.

Mr. Call: What did you mean by saying that it was——

Mr. Chambers: I do not think that anybody in that discussion at all—I do not know that it cuts any figure one way or the other, and I do not care to get into any discussion about it, but I do not think anybody I talked to who was connected with it will contend that they understood that was to be the rate for all time to come. There is nothing——

Mr. Call: What reason had anyone to suppose that lemons could be produced in California for less money than they were
889 being produced for him?

Mr. Chambers: Whenever they got the foreign lemons out of the market they could get very much higher prices.

Mr. Call: How could they get them out of the market and keep them out of the market?

Mr. Chambers: Because just as I state there, they said they would produce enough in five years to get them out altogether, the same as oranges.

Mr. Call: How did you suppose they could get them out?

Mr. Chambers: Competition.

Mr. Call: Competition with whom?

Mr. Chambers: With the foreigners?

Mr. Call: In the cost of production?

Mr. Chambers: Yes.

Mr. Call: In the cost of production?

Mr. Chambers: Yes, they hoped to reduce the cost of production.

Mr. Call: You would have to do either one thing or the other, enhance the cost of foreign lemons or decrease the cost of California lemons?

Mr. Chambers: The importer was losing at the same time. These losses on lemons were not confined to the California pro-
890 ducers?

Mr. Call: Where did you get the idea that the foreigner was losing money?

Mr. Chambers: From the statements made by importers through railroad men in the East and California growers.

Mr. Call: That the foreigner was losing money?

Mr. Chambers: Yes, sir, that the foreigner was losing money.

Mr. Call: Did you not know that the lemon crop in Sicily was unprecedented and has been all the time and doubling up, such as the world never saw before in the production of the Sicily lemon, and has been going on for fifteen years?

Mr. Chambers: Well at that time?

Mr. Call: At that time and ever since it has been grown, right along.

Mr. Chambers: That did not concern the California grower.

Mr. Call: It did in this way, that it was a very prosperous enterprise and lemons were being produced at a price and laid down here at less than they could be produced for here.

Mr. Chambers: The California men decided to grow enough to supply all the United States markets and wanted help to get into those markets and drive the foreign lemon out, and then the
891 struggle began. Now the foreign man lost at the same time the California man did, and as it was stated within a short time when California was producing enough, the foreigner would get tired losing money on them just the same as the foreign oranges did.

Mr. Call: Did you not know that the whole foreign business is handled by a group of importers in New York City?

Mr. Chambers: Yes.

Mr. Call: And don't you know that they buy them on the other side and import them into this country?

Mr. Chambers: Yes, but they sell them to the same people you do.

Mr. Call: Did you not make any investigation to know how much money that group of importers were making in the business? Who led you to think they were hard up and losing money?

Mr. Chambers: I did not say they were hard up. I said they lost money on their shipments.

Mr. Call: In brief, in order to permit the California lemon grower to compete on any better terms after that rate went into effect, it would have to be on a basis of a reduction in the cost, would it not?

Mr. Chambers: I stated before that it was not altogether the rate. The California lemon grower at that time had this
892 excess of decay. He had other things——

Mr. Call: Where did you get that idea, that he had excessive decay?

Mr. Chambers: I got it from my own knowledge of the situation.

Mr. Call: Where did you get it?

Mr. Chambers: From all the growers in southern California.

Mr. Call: You think there was more decay then?

Mr. Chambers: Yes.

Mr. Call: Would it suprise you to know there was more decay since?

Mr. Chambers: Yes, sir, it would.

Mr. Call: We can show you from every packing house in southern California that there was an increase in decay last year over any other year in the business.

Mr. Chambers: Well.

Mr. Call: Now you said the business had been doubled up and concentration in the business. What small packing house has gone out of business in the past six years in favor of larger packing houses?

Mr. Chambers: Well I think your own records will show that.

Mr. Call: Do you know of any?

893 Mr. Chambers: Certainly I do.

Mr. Call: Where?

Mr. Chambers: I know concentrated at San Dimas is the whole lemon business.

Mr. Call: Hasn't it been all these years?

Mr. Chambers: No.

Mr. Call: What house has gone out of business?

Mr. Chambers: The house at Glendora and at another point near Cavina, and that house in San Dimas has been built since this rate was put in.

Mr. Call: Nine years ago that San Dimas house was built.

Mr. Chambers: Not the new house.

Mr. Call: The big house.

Mr. Chambers: There was one building and then an addition was built and then a new house was built.

Mr. Call: What change has there been in the method you speak of in putting up the California lemon during those six years, how is it any different in the way of treatment?

Mr. Chambers: In the way of handling.

Mr. Call: How is it any different in the way of handling?

Mr. Chambers: Don't you handle them more carefully?

Mr. Call: Well we may handle them more carefully. Our
894 witnesses have said that.

Mr. Chambers: Don't you decrease the percentage of rot in the boxes or decay? That improves the quality in the markets.

Mr. Call: Do you know what causes this decay in lemons?

Mr. Chambers: I understand it is the bruises it gets in handling.

Mr. Call: Would you be surprised to know that has very little to do with it?

Mr. Chambers: I would.

Mr. Call: It is the condition of the lemon and the weather conditions that have more to do with it than anything else. Would that surprise you to know that?

Mr. Chambers: It is different from what everybody has testified that seemed to know about it. That is not what Mr. Powell and his assistants said about it.

Mr. Call: Has he said anything about lemons?

Mr. Chambers: Yes, sir.

Mr. Call: Where?

Mr. Chambers: You will find it in his report.

Mr. Call: Will you find me in his report anywhere that he says anything about lemons?

Mr. Chambers: Well he has told me about it.

895 Mr. Call: But he has not said anything in his publications. Well now, to be real honest about this, the only real change in the condition of the lemon industry when you advanced the rate was the advance they got?

Mr. Chambers: No.

Mr. Call: To be real straight about it, was not that all there was to it?

Mr. Chambers: I think your own witnesses——

Mr. Call: Just give me your own idea about it.

Mr. Chambers: No it was not.

Mr. Call: What was it?

Mr. Chambers: I just told you.

Mr. Call: Didn't you tell our people not over two months before

we got that tariff through that there was no thought of any change in the lemon rate?

Mr. Chambers: I don't think so.

Mr. Call: Did you not tell us time and again there in the Exchange office that there was no thought of any change in the lemon rate?

Mr. Chambers: No I do not think that I did.

Mr. Call: Until after this tariff act was passed?

Mr. Chambers: No, I discussed with Mr. Woodford and
896 your Exchange a number of times about the increase in the lemon rate and I did say to you that I would let you know a sufficient time in advance of the change in the rate so you would have a chance——

Mr. Call: Did you not tell us that after the tariff had been passed?

Mr. Chambers: No.

Mr. Call: Was it not just a little while before, not over a month before that you told us there was no thought of changing the lemon rate?

Mr. Chambers: No, I don't know that I did.

Mr. Call: Now you say that Mr. Ripley believed that the lemon growers should do the improving in this thing in order to get these markets and increase the production?

Mr. Chambers: I did not say so.

Mr. Call: Did you not say so on direct examination, that Mr. Ripley told you he thought the lemon growers ought to improve their methods?

Mr. Chambers: Mr. Ripley's letter to Mr. Biddle says that, I think.

Mr. Call: Perhaps I am wrong in that.

Mr. Chambers: Mr. Ripley always did contend, yes, that
897 the lemon growers have got to improve——

Mr. Call: And when he does put his money into improved packing houses and improved methods and into taking care of his groves and invest a largely increased capital, do you think any part of it belongs to him or does it all belong to the railroad?

Mr. Chambers: I do not think so. We were not after any part of it.

Mr. Call: Do you think any part belongs to the growers or does it belong to the railroads when there are improvements in the business?

Mr. Chambers: A reasonable charge for bringing those lemons to the market belongs to the railroad.

Mr. Call: But does any increased part of that profit which you think arises from improvement in methods belong to the grower, from his increased investment?

Mr. Chambers: You certainly would not want the railroad company to handle the business below cost, and you have a very large profit.

Mr. Call: We will get to that point in a few minutes and see

what there is about this cost proposition. But do you believe
898 that the improvement which you have made to the service in the way of larger locomotives, reducing your grades, decreasing your cost and enabling you to give the same or better service at a much lower rate—does any part of that belong to the public?

Mr. Chambers: Well don't you think the cost of the carriers also increases?

Mr. Call: But I say these improved methods whereby his costs are decreased?

Mr. Chambers: He has got to have improvements in order to make any profit nowadays.

Mr. Call: Don't you know your transportation cost has decreased 5 per cent in the last two years?

Mr. Chambers: No, I do not know as to that. The reports will show.

Mr. Call: Don't you know you are carrying freight now at less cost per ton per mile than you ever have before in the history of the road?

Mr. Chambers? No, I do not.

Mr. Call: You don't know that?

Mr. Chambers: I don't know; I haven't compared it.

Mr. Call: Are these transportation improvements for the benefit of the public to any degree or are they all for the benefit
899 of the railroad?

Mr. Chambers: I should say the public gets a very large benefit out of them.

Mr. Call: In what way, by the decreased rates?

Mr. Chambers: By improved service and decreased rates.

Mr. Call: What rates?

Mr. Chambers: A number of rates.

Mr. Call: Just think of some of them.

Mr. Chambers: The orange rate was one.

Mr. Norton: And the lemon rate?

Mr. Chambers: And the lemon rate.

Mr. Call: But then you are thinking of jacking that up again, or have jacked it up again. It is not fair to say that these improved facilities for transporting and the decreasing cost ought to have some effect toward decreasing rates?

Mr. Chambers: Well, they have. I should say in a general way that unless that was done if we kept up, on these old methods and with the old cars and engines that our rates today would be very much too low. We had to reduce the cost of handling the traffic itself——

Mr. Call: If it appeared as a proven fact on the trial of
900 this case that the actual cost of transportation had decreased for this product and that the actual cost of production had increased, what would you say as to what effect that ought to have on the rate?

Mr. Chambers: That the actual cost of handling the oranges had decreased?

Mr. Call: I am talking particularly about lemons now, but talk

about the whole citrus product if you will; suppose the cost of production had increased owing to the increase in cost of labor and material and cost of handling and cost of land and particularly the increase in the cost of fertilization, had increased the cost of producing this article, and at the same time the transportation cost, owing to newly discovered inventions and methods had decreased, what effect ought that to have on the rate?

Mr. Chambers: I do not see how you could take any one rate in itself and figure out that. That is an impossibility.

Mr. Call: You would not say that those factors should reduce the citrus fruit?

Mr. Chambers: The question would be, if that showing was made which commodity was best entitled to the reduction.

Mr. Call: Taking your judgment for it, which one do you
901 think ought to get the reduction?

Mr. Chambers: I don't know. I would have to make an investigation.

Mr. Call: You have not done anything else but investigate this system.

Mr. Chambers: The Santa Fe System hauls a good many commodities.

Mr. Call: I know they do and you are putting your whole time in, in discovering this question of rates.

Mr. Chambers: I don't know what you mean by discovering.

Mr. Call: Well investigating and finding out and sliding along the line to see which is the lowest.

Mr. Chambers: I don't think so.

Mr. Call: What rates do you think are the highest in your tariff?

Mr. Chambers: What do you mean, the California rate?

Mr. Call: Yes, the California commodities.

Mr. Chambers: The highest in the tariff?

Mr. Call: Yes.

Mr. Chambers: I think the highest rate in the tariff on the California commodities——

Mr. Call: Everything considered.

902 Mr. Chambers: Do you mean the rate itself?

Mr. Call: I mean the rate itself, everything considered, what is the highest rate, which one ought to come down if you are going to reduce the rate?

Mr. Chambers: That is another question, I don't know about that. I can tell you which rate is the highest in the rate itself.

Mr. Call: Which rate in that tariff of California commodity rates is actually higher all things considered than the orange rate, all things considered, what rate is there in that commodity list which is higher than the orange rate?

Mr. Chambers: There are a good many rates.

Mr. Call: Name one.

Mr. Chambers: I will have to look into it.

Mr. Call: You are a rate man and ought to know all about this thing. Name the rates you think are higher than the orange rate and why you think so.

Mr. Chambers: The dried fruit rates are higher than the orange rate. The dried fruit rate is $1.10, minimum 40,000 pounds.

Mr. Call: What is the value of it?

Mr. Chambers: Well it varies.

903 Mr. Call: The value of it is four or five times the value of an orange, is it not?

Mr. Chambers: I should not think so.

Mr. Call: Pound for pound?

Mr. Chambers: Well it depends on what it is. Prunes are very low.

Mr. Call: Does your tonnage have anything to do in fixing your rates?

Mr. Chambers: The rate on beans is 85 cents.

Mr. Call: The rate made on beans is 85 cents?

Mr. Chambers: Yes, with a minimum of 40,000 pounds.

Mr. Call: Do you know what the cost to you per mile is on beans as compared with oranges?

Mr. Chambers: No, I cannot tell you that.

Mr. Call: You don't know anything about your transportation expenses?

Mr. Chambers: Well, beans can be handled in an ordinary box car, which of course is a very much lighter car than the refrigerator car and you can load them to the capacity of the car.

Mr. Call: How much lighter is it?

Mr. Chambers: About six or eight thousand pounds, some

904 of them 10,000.

Mr. Call: Do you know what the average weight of your new box cars is?

Mr. Chambers: No, our new box cars run all the way from 30,000 to 35,000.

Mr. Call: Up to 46,000 some of them, do they not?

Mr. Chambers: The larger cars?

Mr. Call: Yes.

Mr. Chambers: I don't know as to that.

Mr. Call: You have some box cars which weigh more than the refrigerator cars, have you not?

Mr. Chambers: I don't think so.

Mr. Call: What does the refrigerator car weigh?

Mr. Chambers: The refrigerator cars weigh 42,000 to 45,000.

Mr. Call: How many carloads of beans do you have out of California?

Mr. Chambers: Several thousand carloads, probably 5,000 or 6,000 carloads.

Mr. Call: How many carloads of deciduous fruit do you carry out?

Mr. Chambers: Do you mean the output of California?

Mr. Call: No, that you carry.

905 Mr. Chambers: I think we carried last year somewhere about 2,500 cars.

Mr. Call: How much vegetables?

Mr. Chambers: About 2,000 carloads probably, somewhere along there, 2,000 to 3,000.

Mr. Call: On the beans you gave me the whole output of California?

Mr. Chambers: Yes, sir.

Mr. Call: Not what you carry?

Mr. Chambers: No.

Mr. Call: How many do you carry?

Mr. Chambers: I don't know how many we carry.

Mr. Call: How many melons do you carry?

Mr. Chambers: No melons, that is——

Mr. Call: How much celery?

Mr. Chambers: Oh, I should say 1000 to 1500 carloads.

Mr. Call: And your rate on celery is as a matter of fact 95 cents to $1.00 is it not to Chicago points?

Mr. Chambers: I think it is 95 cents to Chicago, is it not?

Mr. Butler: $1.05 to Chicago and $1.25 to seaboard.

Mr. Call: I have it 95 cents to Chicago.

Mr. Chambers: That is the old rate. It was advanced some
906 a couple of years ago.

Mr. Call: How many apples do you carry?

Mr. Chambers: We carry but very few apples.

Mr. Call: You say you make your apple rate on account of competition?

Mr. Chambers: Yes.

Mr. Call: $1.00 on account of competition. It moves in the same car?

Mr. Chambers: Generally in the same car, yes, sir.

Mr. Call: What is the apple rate?

Mr. Chambers: $1.00.

Mr. Call: It moves in the same equipment?

Mr. Chambers: Yes.

Mr. Call: Just as perishable as oranges, is it not, and lemons?

Mr. Chambers: If——

Mr. Call: I——

Mr. Chambers: — if it moved——

Mr. Call: The minimum is below what the new class of cars would have, is it not, and only a trifle above your present minimum?

907 Mr. Chambers: You mean the minimum on the apples?

Mr. Call: Yes.

Mr. Chambers: Well the minimum is 30,000 pounds.

Mr. Call: And you fix that on a competitive basis?

Mr. Chambers: On the basis of market competition?

Mr. Call: Now how much more are your apples worth than your lemons here, pound for pound to the grower?

Mr. Chambers: I don't know as to that.

Mr. Call: Don't you know they are worth two or three times as much as lemons here, pound for pound?

Mr. Chambers: I do not know.

Mr. Call: Do you know anything about the cost of producing apples as compared with lemons?

Mr. Chambers: No.

Mr. Call: Do you know anything about the cost of picking and packing and handling or getting them on the car as compared with lemons?

Mr. Chambers: No.

Mr. Call: Why can you not give the California lemon growers the same chance to compete against Sicily that you give the apple grower of California against the apple growers East?

908 Mr. Chambers: Well the apple grower of the East has got to meet the local competition everywhere, that is, everywhere east of the Rocky Mountains the competition is practically the same now——

Mr. Call: Has not the California lemon grower got to compete with the Italian grower everywhere in the country?

Mr. Chambers: No, when he gets west of the Missouri he has the country to himself. When he gets on the same basis of the competition of the apple grower in the East, on that basis, he goes to the extreme East, New York and Baltimore.

Mr. Call: You see no real reason, do you, why your lemon rate should be greater than the apple rate?

Mr. Chambers: I did not say that.

Mr. Call: Well you have not given any real reason yet.

Mr. Chambers: Well the apple rate is a forced rate, it is a rate on account of market competition. That is the highest rate that the product will stand and move to the East.

Mr. Call: Your lemon rate was on the same basis, at $1.00?

Mr. Chambers: The lemon rate was made on that basis at $1.00, yes, at that time. It is just a proposition of whether or not we would make the rate and move the apples. That was the

909 condition when the $1.00 rate was made on the lemon, that is as I understand it, if we did not make that rate the lemons would not move to the territory east of Chicago. There never was any question about the territory west of Chicago.

Mr. Call: When you made that lemon rate you and Mr. Ripley certainly did not think or did not have it in mind that by doing so and encouraging the planting of large groves of lemons and putting the lemon growers in a position where they could not get rid of the property or move it or sell it, that then after getting them in that position you could raise the rate on them, did you?

Mr. Chambers: I do not think there is anything in the record which will indicate anything of that kind.

Mr. Call: I know, but at that time what did you think would put the lemon grower in California in any better position if you intended to raise the rate?

Mr. Chambers: I have told you a half dozen times and that letter shows it.

Mr. Call: I know you have said that, but specifically it does not. Now you ought to know specifically as to what feature of it

910 would put the grower in better position in the future. Did you think it would cost him less to produce a box of lemons?

Mr. Chambers: I thought he was going to get a better price for his lemons. The cost of production was shown there, I don't know whether it would increase or decrease in the future, but the California grower expected to get very much better prices for the lemons in the future. If he did not he said he would have to retire from the business entirely. He said he would be willing to keep on the basis of cost for a few years, but after the rate was put in he began to make a profit the next year——

Mr. Call: You mean during the two or three years when Sicily was frozen out?

Mr. Chambers: Yes, and I think maybe after that.

Mr. Call: You know since that time the lemon growers lost money as an average?

Mr. Chambers: I do not.

Mr. Call: You spoke about the marketing methods having improved?

Mr. Chambers: Yes.

Mr. Call: Will you be a little more definite about that? In what way do you think they have improved?

911 Mr. Chambers: They have improved in that the competition is not so severe between the California shippers themselves, they are better organized. I think you have got more growers in your association and I think you ship a greater proportion of the crop today than you did then. And I think in the lemon business more so; besides that the great bulk of the remaining lemons outside of your association are in the hands of large shippers or growers.

Mr. Call: Don't you know so far as the Exchange is concerned it does not ship a lemon and never has, and never has received a dollar for lemons?

Mr. Chambers: Well it is associated with the same organizations.

Mr. Call: I know it is associated with the same organizations but don't you know there is as much competition between the shippers who ship through the Exchange as there is between them and the independent people exactly?

Mr. Chambers: No, I do not know that. If that is so then your organization is not getting the results you expected it to get when you formed it.

Mr. Call: Well we are among those who have tried to keep within the law. We do not get together as a freight bureau and

912 check up rates.

Mr. Durbrow: You worked up a pretty fine trust, just the same.

Mr. Call: I will offer this contract under which all business is done and read into the record this clause:

"It is understood however that each shipper reserves to itself a right to regulate and control its own shipments and use its own judgment and decide for itself when and in what amount it shall ship, to what markets it shall ship, where its products shall be sold, and except at auction points, the price it is willing to receive. They will reserve the right of free competition with all other ship-

pers, including other members of this organization, unhampered, and uncontrolled by any one."

Commissioner Prouty: I think you will find that same reservation in the articles of agreement under which every traffic association is formed.

(A paper offered in evidence, marked Complainants' Exhibit Number 38, received in evidence March 26, 1910, and same is hereto attached.)

Mr. Call: But they get together and we do not. That is the difference, and we keep records and they do not.

913 Mr. Norton: I am much obliged to the Commissioner, I was just going to say the Transcontinental Association——

Mr. Call: What do you do at these traffic meetings?

Mr. Chambers: Arrange for the publication of the rates.

Mr. Call: After you have agreed on them?

Mr. Chambers: Well propositions are submitted at those meetings and they are considered.

Mr. Call: Who does the agreeing?

Mr. Chambers: Each road acts for itself.

Mr. Call: Are they all represented there?

Mr. Chambers: Usually, yes, sir.

Mr. Call: All of them, or do they just have one attorney representing all of them?

Mr. Chambers: No, usually all represented. The lines east of Chicago are represented by a committee and west of Chicago by individuals.

Mr. Call: And you get together there and somebody makes a motion, is that the way it is done?

Mr. Chambers: No, it is not done by motion.

Mr. Call: How is it done?

Mr. Chambers: Some one submits a propositions and if it is agreeable it is adopted.

914 Mr. Call: Do you have a docket?

Mr. Chambers: We have a docket of subjects.

Mr. Call: And then somebody says "Well I think the lemon rate, it is time to raise that, and we will put that on the docket," is that the way you do it?

Mr. Chambers: That is one way of doing it.

Mr. Call: And then you vote on that?

Mr. Chambers: Each line instructs for itself, the representative of the line, their instructions for that line.

Mr. Call: What adopts it, what vote?

Mr. Chambers: Mr. Countiss, who is the agent of the Bureau and has charge of the publication of the tariffs is the chairman of the meeting. Mr. Countiss takes the tariff and lays it down before them on the table and when the proposition is called it is discussed and each line around the table instructs Mr. Countiss what to do, and he makes the correction.

Mr. J. H. Call: I notice that Mr. Countiss makes the tariff under power of attorney from the railroads?

Mr. Chambers: Yes.

Mr. J. H. Call: Is that a written power of attorney?

Mr. Chambers: Yes. He is the agent for the individual line to compile and file those tariffs with the Commission.

915 Commissioner Prouty: His power of attorney has to be filed with the Commission.

Mr. J. H. Call: I notice the tariff contains also the names of C. W. Bullen as agent and J. F. Tucker. Do those two men participate with Mr. Countiss in the making and filing of this tariff?

Mr. Chambers: They do. They are the agents for the lines east of Chicago, and Mr. Bullen for the Trunk Lines and Mr. Tucker for the C. F. A. Lines.

Mr. J. H. Call: And Mr. Countiss for the lines west of Chicago?

Mr. Chambers: Mr. Countiss for the lines west of Chicago.

Mr. J. H. Call: This docket which you speak of contains no other record or memorandum than the name of the commodity and the rate that is fixed?

Mr. Chambers: The docket is the notice sent out to all of the carriers that are members of the bureau of the subjects that are to be considered at the conference. That is, such subjects as are filed or application sent in to Mr. Countiss' office by the shipper or carrier.

Mr. J. H. Call: It contains a list of commodities under discussion, does it?

Mr. Chambers: Yes, it contains a list of the commodities
916 and stated briefly what the application is——

Mr. Call: Does it show the result of the agreement as to the rate?

Mr. Chambers: No, it shows no result at all.

Mr. J. H. Call: How do you carry that, in your head?

Mr. Chambers: No, that is simply for the information of the members and the conference. When they come to the conference they take this list of docketed subjects and——

Mr. J. H. Call: What I was getting at is, how do you keep a record of the results of your meetings?

Mr. Chambers: Mr. Countiss makes the record right at the time in the tariff. If it is the eastbound tariff and they are eastbound subjects to be considered——

Mr. J. H. Call: He does it at the time?

Mr. Chambers: Yes, he does it at the time.

Mr. J. H. Call: He does not try to carry it in his head?

Mr. Chambers: He makes whatever memoranda are necessary.

Mr. J. H. Call: And that is carried into the regular published tariffs?

Mr. Chambers: Mr. Countiss then compiles and publishes
917 the tariff. He is the agent for all the lines and works under their individual instructions.

Mr. A. F. Call: One more question in regard to the pre-cooling charge. How did you get at that thirty dollar charge?

Mr. Chambers: Well I did not get at it, I do not know just what

the basis was, but I assume that is the basis on which it was made——

Mr. Call: It was done to head off the people from pre-cooling, was it not?

Mr. Chambers: No it was done on the basis that we ought to have some compensation for providing those facilities and the cars.

Mr. Call: Why was it fixed at just the sum of the difference in the cost the shippers can do it for and the amount you charge for refrigeration?

Mr. Chambers: I do not know that that is the difference, and I will say here it is largely an experimental rate. We did not know just what would result when we started in, and the idea was to give you the privilege of sending your cars in that way so you could continue your experiments.

Commissioner Prouty: Would you regard, assuming you had to furnish a car, assuming you had to furnish an insulated
918 car which I think must be very much like a refrigerator car, would you say that thirty dollars was a reasonable charge for the additions that are made to the car in order to put it in shape to be used as a refrigerator car?

Mr. Chambers: Well I do not think I would like to state as to that, because I have not made any investigation. But it would take in the supervision of that car from wherever——

Commissioner Prouty: You have got to supervise the car anyway, Mr. Chambers. If the cars go through under ventilation you have got to give them a certain amount of supervision. Now we will assume you give the car exactly that same supervision and no greater supervision; in other words you do not pay anything more for supervision, if the supervision is the same, than you do when re-iced.

Mr. Chambers: The supervision is not to the extent on the ventilated cars that it is on refrigerator cars.

Commissioner Prouty: Not on all refrigerator cars, but if this car can be pre-cooled and iced and sent without inspection then the supervision is no greater with reference to that car.

Mr. Chambers: No, if it can. That is the question. But we have not permitted them to go through in that shape, and we are not satisfied now that it can be done, so we calculated that we
919 would have to look after that car in transit.

Commissioner Prouty: Where you hire the car from a packer, where the packer furnishes the car or where the beer company furnishes the car you ordinarily pay how much for the car by the way of mileage?

Mr. Chambers: I think we pay the same rate of mileage, I think on all refrigerator cars when loaded with perishable freight. And as Mr. Leeds stated that, it is three-quarters of a cent, I think.

Commissioner Prouty: Three-quarters of a cent a mile is what you pay for the use of the car; that includes the furnishing not only of the refrigeration, but of the car itself. It would not be worth as

much a mile to furnish the additional bunkers as it would to furnish the entire car, would it?

Mr. Chambers: No.

Redirect examination:

Mr. Norton: The use of the word "permanent" in your letter to Mr. Biddle was in contradistinction to the expression which had been used in the temporary tariffs "winter relief rate," was it not?

Mr. Chambers: Yes, sir, I explained that.

920 Mr. Norton: I did not catch your explanation.

Mr. Chambers: It is just the difference between what is known as a permanent rate—the winter relief rate was published to take effect on a certain date and expire on a certain date and it would go out on that date without further action.

Mr. Norton: In the various discussions of this lemon rate you had always assured the shipper they would receive ample notice of the increase when it came?

Mr. Chambers: I had always told them so, yes, sir.

Mr. Norton: Did they get such notice previous to the publication of this tariff?

Mr. Chambers: Yes, sir; several months in advance.

Mr. Norton: To whom did you give notice?

Mr. Chambers: I think I notified Mr. Woodford and Mr. Frazier. I attempted to notify Mr. Frazier.

Mr. Norton: Mr. Peabody says you stated you carried about 1500 cars of vegetables. He says it was 537 cars of fresh vegetables all told last season.

Mr. Chambers: Well I had in mind some we carried this year.

(Witness excused.)

921 Mr. Durbrow: In line with the cross examination of Mr. Chambers and especially in view of the fact that counsel for complainant has asked a great many witnesses to be real honest and laid particular stress on the veracity of witnesses, and in order that I may escape the imputation of any dishonesty, I feel it incumbent upon me to read into the record here from the 4th volume of the report of the Committee on Ways and Means of the Congress of the United States from statements made by the representatives of the complainants in this case, just two very short sentences.

Mr. Call: I think we have already had a ruling on the question of the admissibility of that record.

Mr. Durbrow: It is a statement of the representative of the complainants——

Commissioner Prouty: It might be in the nature of an admission.

Mr. Durbrow: It is.

Commissioner Prouty: Who was the representative?

Mr. Durbrow: Mr. A. F. Call.

Mr. Call: I have no objection to the record going in, the whole record, but a garbled statement from it, especially as I have not been a witness in this case, a garbled statement from it would
922 be misleading to the Commission. I have no objection to the whole record.

Commissioner Prouty: Without ruling on it one way or the other, you may read what you desire to put in.

Mr. Durbrow: Of course this is subject to a motion to strike out if your Honor thinks it has no relevancy.

Commissioner Prouty: It is not admitted now.

Mr. Durbrow (reading):

"The Chairman: How does the freight rate compare with the rate in 1907?

"Mr. Call: On our orange business it is ten cents per hundred pounds and on lemons it is twenty-five cents per hundred pounds less. The railroads came to the rescue of the lemon industry to some extent, as much as they could, because it was going down."

And on page 399, the question was asked of Mr. Call:

"Have you not tried to get it reduced?

"Mr. Call: We had hearings before the Interstate Commerce Commission when it was $1.25 and they ordered testimony to be taken and the railroads gave us a reduction. Now we have 2300 miles' haul and their rate is less than a cent per ton per mile. The cars are expensively built and they have to haul them back
923 empty a part of the time. I doubt if they are not now pretty close to bed rock on that proposition."

That is a statement made by the representative of the complainants in this case when he appeared before the Congressional committee in an endeavor to have the tariff raised.

Commissioner Prouty: He was speaking of the lemon rate?

Mr. Call: I was speaking of the lemon rate and the disposition of the committee seemed to be that they wanted us to go to the railroads for relief just as at that time we were before the committee for relief. We were driven from pillar to post.

Commissioner Prouty: At that time the rate was $1.00?

Mr. Call: Yes, and it was as low as we expected, and as I stated it was as low as we thought they ought to go at that time.

Mr. Durbrow: That last representation made by Mr. Call has reference to oranges and not to lemons.

Mr. Call: No, it has reference to the lemons only. All we were talking about was lemons.

Commissioner Prouty: Mr. Call was not asking for any
924 duty on oranges.

Mr. Durbrow: I would like to read the paragraph preceding this. He says:

"I don't know what the Boomers may have done. I have not heard of their doing that. There are a lot of schemes all through the west of one kind or another in that line. I cannot keep up with them. They are raising a good many oranges up in that county, Tulare County, by pumping water. They get up into the mountains there below the frost line, and they are raising a good many oranges in that arid country."

Then he continues to talk about the orange industry.

Mr. Call: Those are side remarks introduced by some of the democratic members of the committee, about oranges; but we were talking about lemons.

925 J. R. HAYDEN was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Norton: How long have you had acquaintance with the citrus industry in southern California?

Mr. Hayden: About nine years.

Mr. Norton: Have you been in close contact with it during that time?

Commissioner Prouty: Who is Mr. Hayden and what is his position?

Mr. Norton: Just state what your business is?

Mr. Hayden: I am industrial agent for the Santa Fe Railroad.

Mr. Norton: And you have been agent for the Santa Fe Railroad——

Commissioner Prouty: I simply wanted to know his connection with the railroad.

Mr. Norton: In addition to your experience among the people producing citrus fruit, have you made a special examination recently preparatory to this trial?

Mr. Hayden: I spent about two months in the orange and lemon districts prior to the hearing.

926 Mr. Norton: Have you made any inquiry as to the price paid to growers per one hundred pounds during a period of years?

Mr. Hayden: Yes, sir.

Mr. Norton: What period of years did that cover?

Mr. Hayden: The last five years.

Mr. Norton: Has it covered also the orchard cost?

Mr. Hayden: I have compiled some data as to the orchard cost, both of oranges and lemons.

Mr. Norton: What have you found the lemon production to be per acre, of a full bearing orchard?

Mr. Hayden: There is an average of about a car to an acre where an orchard is well cared for.

Mr. Norton: Do you want to name any instances?

Commissioner Prouty: I do not think we will go into particular instances. He may state in a general way the result of his observations and investigations.

Mr. Hayden: Yes, sir, some of them do better than a car and some not quite so well; as an average proposition a well cared for lemon grove will bear a car to the acre.

Commissioner Prouty: How many boxes to a car, do you
927 understand?

Mr. Hayden: We are loading now about 324 boxes; in some of our shorter cars we load 312.

Commissioner Prouty: I have understood the cars all the same length.

Mr. Hayden: I think most of our cars which we are loading with lemons now probably are 40 foot cars. Orchards will bear about 27,000 or 28,000 pounds. There is some shrinkage in the storage

of lemons and they will ship out about 25,500 or 26,000 pounds to the acre as an average proposition.

Mr. Norton: I had some notes to call your attention to certain instances but the Commissioner does not care to hear of those and we will pass them by. Now, have you prepared any data to show the record of good and bad orange production in that state?

Mr. Hayden: I have prepared some data from the manager of a packing house who in explaining to me what the average grower would produce and what a grower would produce who put the same money and time in his orchard that a successful man would in any kind of business—I have here a record of some several orchards in different years as to what——

928 Commissioner Prouty: We will not take time to hear as to a particular orchard because that will open the door to an unlimited amount of testimony. But you may state in a general way what a well cultivated orchard will produce and what an improperly cultivated orchard will produce.

Mr. Hayden: I have in six cases; in an ordinarily cared for orchard, thirteen thousand and some odd pounds.

Mr. Norton: You are speaking now of oranges?

Mr. Hayden: 13,606 pounds; that is, 187.8 packed boxes. And, in a well cared for orchard the average is 448.4 packed boxes, or an average per acre of 31,380 pounds.

Mr. Norton: Have you made an examination of the reports of the association submitted by the complainants at our request?

Mr. Hayden: Yes.

Mr. Norton: Have you ascertained what amount per hundred pounds has been returned to the grower for oranges and lemons for the last several years?

Mr. Hayden: For the past five years that examination shows the average price paid per acre on all varieties of oranges of $1.885 per hundred pounds.

Mr. Norton: Can you tell what the average was on Valencias?

Mr. Hayden: I believe $3.16.

929 Mr. Norton: And the average on navels?—that is immaterial.

Mr. Hayden: I gave you before the average on all varieties.

Mr. Norton: Is this average representative of the entire producing country?

Mr. Hayden: It is representative of the entire district controlled by the Southern California Fruit Exchange, yes, sir.

Mr. Norton: And the territory controlled by that Exchange or served by that Exchange is representative of the entire citrus territory?

Mr. Hayden: Yes, sir.

Mr. Norton: Have you similar information with respect to what was paid to the growers for lemons?

Mr. Hayden: $3.59 average for the last five years, per hundred pounds?

Mr. Norton: How much?

Mr. Hayden: $2.59 I should say.

Mr. Norton: What do growers generally say it costs to maintain an orange and also a lemon grove, stating those separately?

Mr. Hayden: Well, you will find growers that will tell you their orchard maintenance costs them anywhere from $60 to
930 $125.

Commissioner Prouty: Does that include water and fertilizer?

Mr. Hayden: Yes, sir, that is the general maintenance up to the point of picking.

Mr. Norton: And what do they give you as the cost of picking, hauling and packing both oranges and lemons separately, if you have that information?

Mr. Hayden: For oranges I figure the average cost of picking is 9.6 cents per hundred pounds; for hauling 1.7 cents per hundred pounds; for packing, the average cost for packing a box or oranges as taken from a number of official reports of various associations throughout the orange-producing district is 51 cents a packed box, or 44 cents per hundred pounds; the marketing charge, including the exchange and central office expenses are figured at 5.7 cents per packed — or 8.2 per hundred pounds. Now you want the information on lemons?

Mr. Norton: If you have it handy.

Mr. Hayden: Picking lemons per hundred pounds 21.2 cents; for hauling lemons per hundred pounds 3.6 cents; total for picking and hauling 24.8 cents; for packing, also taken from the records of the various associations throughout the orange and lemon shipping district, 53.4 cents per box, or 63.5 cents per hundred pounds.
931 The selling charge is 6.8 cents per packed box, or 8.1 cents, figured on the basis of 80 pounds of lemons to the box.

Mr. Norton: The selling charge means——

Mr. Hayden: Exchange and central office expenses.

Mr. Norton: The Exchange and central office expenses?

Mr. Hayden: Yes, sir.

Mr. Norton: Have you anything else in your memoranda which you want to give me?

Mr. Hayden: I think that covers the essential points that have not been covered elsewhere.

Mr. Norton: What do the shippers and growers with whom you talked say to you about budding back lemons to oranges?

Mr. Hayden: There has been a great deal of re-budding done in this State both between the various varieties of oranges and from lemons back to oranges and a few oranges back to lemons.

Mr. Norton: They have been budded both ways?

Mr. Hayden: Yes, sir, very much so.

Mr. Norton: And they have put out orange trees when they could not get lemon trees so as to save a year's growth and then converted the orange trees into lemon trees?
932 Mr. Hayden: That has been done in one or two cases. But that of course I do not think could be taken as a general practice.

Mr. Norton: What explanation was given you of the cases where lemon trees had been budded back to oranges?

Mr. Hayden: The most of the cases where lemon trees had been budded back to oranges was done prior to 1905. There was a good deal of it done from 1900 to 1904 and 1905 and in a great many cases the lemon trees were located on uncongenial soil, poor drainage, or down in the valleys where the frost affected them materially.

Mr. Norton: Were any of them situated where the owner did not have the advantage of storing and proper care for his lemons?

Mr. Hayden: Yes, sir, I think that was the reason in some cases why the lemons were budded over to oranges.

Mr. Norton: Did any of them say to you as to whether the lemon business can be conducted by a small operator?

Mr. Hayden: It is more successfully conducted by the large operators, there is no question about that, and I think it is only successful as conducted by the small operators where there is a sufficient acreage held by other small owners to constitute an associa-
933 tion, so that they can join together to co-operate in the expense of installing facilities for properly storing and handling lemons.

Mr. Norton: Did the growers say anything to you about preferring good service against a lower rate and as to a low rate glutting the market with undesirable fruit?

Mr. Hayden: Well, I think one grower and packer spoke to me particularly about that, but it was in connection with the frosted fruit. His idea was—this happened shortly after the frost of the present year, and his idea was that we should charge a higher rate on the frosted fruit than on the other to keep it out of the market, because the general inclination would be to injure the reputation of the California fruit.

Commissioner Prouty: As a general principle, the growers did not object to a low rate?

Mr. Hayden: No.

Mr. Call: The only thing which surprises me is that everybody was not in favor of a higher rate.

Mr. Norton: Mr. Chambers made the statement that when the first temporary rate was made on oranges for the seedlings there was complaint made——

934 Commissioner Prouty: Certainly, there was discrimination made between the seedlings and other oranges.

Mr. Norton: Mr. Hampton made some more or less amazing mathematics on this subject for the complainants and based his calculations upon the reports or data of the State Board of Equalization. Did you consider those reports in your investigation?

Mr. Hayden: Well, I started in to consider them. I went to Sacramento three or four months ago and I supposed I could get the data they had used from the State Horticutural Commissioner; and I went into his office and met Mr. Jeffrey and he said he had nothing on the subject, but he took me down to the State Board of Equalization and I inquired of them about the annual reports that they issued covering acreage and number of trees, horticulturally,

and they said I could have them, but they were not worth anything and were not reliable at all.

Mr. Norton: A member of the State Board told you that?

Mr. Hayden: That was Mr. Brown, chairman of the Board.

Mr. Norton: That is all.

Mr. Hayden: That is the information contained as to the number of trees and agricultural statistics were valueless, that is, for what I wanted. Of course I suppose the tax roll and things of that
935 sort must be correct but he explained to me that the assessor was required to file this report each year and that the law required it and that it was done in a more or less perfunctory manner; that the assessor was taxed with a good deal of other work and that the attention was not given to this branch that it deserved.

Mr. Norton: Did he say they made the same return from year to year without inquiry?

Mr. Hayden: He said as a general proposition he thought that was true.

Mr. Norton: And the returns therefore as to this acreage were unreliable?

Mr. Hayden: Yes.

Mr. J. H. Call: It seems to me that what was said by someone after a record has been made according to law and record based on evidence is not admissible.

Commissioner Prouty: This would not be admissible in court.

Mr. Norton: No, I understand.

Mr. J. H. Call: These records are all based, and it is the duty of each person to put in his statement under oath.

936 Commissioner Prouty: I understand a tree becomes taxable after it becomes a certain age, and it is the duty of the assessor to state whether the tree has reached that age for the purpose of showing whether it is liable to be taxed.

Mr. Hayden: I happen to have a copy of the report for 1905 and 1906, and I just notice, running over it, the omission from Los Angeles County of any amount of bearing lemon trees during that period; also the omission of non-bearing orange trees in the same period, 1905 and 1906. A little further down I find San Bernardino trees reported and no none-bearing trees.

Mr. Call: What report are you reading from?

Mr. Hayden: 1905-6.

Mr. Call: But what report is it?

Mr. Hayden: State Board of Equalization.

Commissioner Prouty: It would not be so material to report the non-bearing trees because they are not taxable anyway, but it would be material to report the bearing trees.

Mr. J. H. Call: They would not put in non-bearing at all.

Mr. Norton: Yes, they are taxable, they tell me.

Mr. Hayden: Yes, they are taxable. But the question is
937 how old a tree should be before a man would tell the assessor it was a full bearing tree.

Mr. Norton: Judging from the action of the State Board here a while ago it would be a pretty mature age sometimes.

Mr. Halsted: I do not understand there is any specific age specified in the law by which the trees are assessed, under the system of assessment in California. The land is assessed and the improvements are assessed.

Commissioner Prouty: Does the law provide the tree is not an improvement until it reaches a certain age?

Mr. Halsted: No, I do not understand there is any certain age mentioned in the law at all. It is simply for the guidance of these assessors in reaching the statistics, but there is no age mentioned in the law.

Mr. Norton: In confirmation of what the State Board told him they came down here a short while ago and raised the percentage of this County several hundred per cent and brought on a threat of secession and southern California was going to secede from northern California.

Mr. Call: How does that corroborate any such thing?

Mr. Norton: You are paying taxes on the new assessment, that is all.

Commissioner Prouty: We will not take time to discuss
938 this thing further. Do you wish to cross examine?

Cross-examination:

Mr. Call: Have you the report there that you made up from your data?

Mr. Hayden: I have some information here, yes, sir.

Mr. Call: Will you submit that so we can go through it?

Commissioner Prouty: It hardly seems to be worth while to spend much time in cross examination of this witness. His statements as to the productiveness of these fields and the cost of the up-keep are very materially different from yours, but we do not expect to determine that accurately anyway. It only has a very remote bearing.

Mr. Call: That was my view of it, but still it is so utterly at variance with our information and the evidence that we have introduced——

Commissioner Prouty: As a matter of course, the testimony of a man like Mr. Chase, so far as actual results go, very much outweighs the testimony of a witness who collects evidence in this way. And the testimony of your Association, which shows the actual price received, would be very much better than the testimony of this witness. But still in a general way this witness has made an investigation and I suppose has attempted to make a care-
939 ful investigation and stated the result.

Mr. Norton: And those figures and prices are drawn from their reports.

Commissioner Prouty: Well, however that may be.

Mr. Call: Well, we will waive the examination.

(Witness excused.)

(Thereupon, at 5:00 o'clock p. m. the further hearing of the above entitled matter was adjourned until Monday, March 28, 1910, at 9:30 o'clock a. m.)

Interstate Commerce Commission, Washington.

I, John H. Marble, Secretary of the Interstate Commerce Commission, do hereby certify that the record hereto attached contains true copies of the original transcript of the stenographer's notes of that portion of the testimony taken before said Commission on March 28, 1910, and of pages 1231 to 1317, both inclusive, of the testimony taken on March 29, 1910, at Los Angeles, California, in the case of Arlington Heights Fruit Exchange and others against Southern Pacific Company and others, docket No. 3000, the originals of which are now on file and of record in the office of said Commission.

In testimony whereof, I have hereunto subscribed my name, and affix the seal of the Commission, this 15th day of April, 1912.

[Seal Interstate Commerce Commission, 1887.]

JOHN H. MARBLE, *Secretary.*

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940 MARCH 28, 1910—9:30 o'clock a. m.

Commisisoner Prouty: Will you call some witness, Mr. Norton?

Mr. Norton: Yes. Mr. Peabody has just stepped out. Well, Mr. Durbrow resquests that he be allowed to put some information in on this pre-cooling subject which we were working on.

Commissioner Prouty: Proceed, Mr. Durbrow, if you desire.

Mr. Durbrow: They will be very brief—three witnesses, and two of them very brief indeed.

Mr. Norton: Here is a very good relief map of the southern California country, and I would like to cut that off and ask leave to introduce that.

(The map referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 6, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Norton: I would like also to introduce as Defendants' Exhibit 7, the assessment list of the county of Los Angeles, showing what is required to be returned under oath, and what is required without oath as statistical information, respecting groves.

941 (The paper referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 7, received in evidence March 28, 1910, and same is attached hereto.)

LUTHER L. YATES, a witness produced on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination:

Mr. Durbrow: What is your name?
Mr. Yates: Luther L. Yates.
Mr. Durbrow: What is your business?
Mr. Yates: Superintendent of the car repair yards of the Pacific Fruit Express.
Mr. Durbrow: Your station is at Los Angeles?
Mr. Yates: Yes, sir.
Mr. Durbrow: How long have you occupied this position?
Mr. Yates: I have been in this business twelve years.
Mr. Durbrow: You have entire supervision, as I understand it, of the repairs of the Pacific Fruit cars?
Mr. Yates: Yes, sir.
Mr. Durbrow: I would like to ask you if you have a blue-print of one of the Pacific Fruit Express cars?
Mr. Yates: Yes, sir.

Mr. Durbrow: I would like to introduce this in evidence,
942 your Honor. I will ask to have this introduced and marked Defendants' Exhibit No. 8.

(The blue-print referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 8, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Durbrow: I don't want you to go into detail, but would like to have you tell us in a very general way as to how these cars are constructed, with reference to insulation, and so forth, with reference to the lengths and dimensions of the cars.
Mr. Yates: The cars are forty-one feet inside measurement. The ice-tanks take up about seventeen per cent of that space. The walls are constructed five and a half inches thick, with two courses of insulation, three air spaces and two courses of paper, in addition to the inside and outside lining. The superstructure is more rigidly braced than the ordinary box-car, owing to the center of gravity being fifteen inches above the floor of the car, due to heavy superstructure; and the insulation is carried all around the car, both sides, ends, top and bottom.
Mr. Durbrow: The floor is also insulated, as I understand it?
943 Mr. Yates: The floor is also insulated.
Mr. Durbrow: What do you use for insulation of those cars?
Mr. Yates: We use the flax fiber, commonly known as linofelt.
Mr. Durbrow: I would like to ask you, please, if you can, in a very general way, to describe the collapsible bunkers and explain their use and purpose.
Mr. Yates: Well, the collapsible bunker is very much more expensive than our stationary bunker.

Mr. Durbrow: About how much does it cost to equip a car with a collapsible bunker, over and above the expense of the usual bunker:

Mr. Yates: About sixty dollars a car.

Mr. Durbrow: What is the purpose of the collapsible bunker?

Mr. Yates: Well, I understand the purpose of the collapsible bunker is to take care of shipments of potatoes or other commodities that cannot be loaded into the space between the bunkers.

Mr. Durbrow: Well, now, in a general way, the collapsible bunker permits you to avail yourselves of this seventeen per cent of floor-space that otherwise would be lost?

Mr. Yates: Yes, sir.

Mr. Durbrow: On such commodities that would not move
944 under refrigeration or would not require this additional space for ventilation purposes?

Mr. Yates: Yes, sir.

Mr. Durbrow: I would ask you if you can tell us in a general way if it cost more or less to maintain a refrigerator car than it does to maintain the usual box-car?

Mr. Yates: Oh yes; yes, sir.

Mr. Durbrow: For what reason?

Mr. Yates: Because every time a refrigerator car is returned west for loading, it goes through our repair yards and is thoroughly overhauled before it is re-placed for loading, which is not the case with a box-car—go through these cars and inspect them thoroughly, all the in*d*ulation on the doors, the ice-tanks, look after the water seals and all the sealing devices; and the cars are thoroughly cleaned inside; any oil spots on the floor are washed off; any stains on the inside lining are re-varnished—if there are any offensive odors in the car they are subjected to fumigation and then re-varnished.

Mr. Durbrow: I would like to ask you if the ice that is carried in these cars has any effect upon their construction or their maintenance?

945 Mr. Yates: Yes, sir.

Mr. Durbrow: Adds any additional expense?

Mr. Yates: Yes, sir. The ice in the car causes condensation there, and naturally deteriorates our insulation.

Mr. Durbrow: And does it also cause any deterioration in the floor of the car itself?

Mr. Yates: It does; on the flooring, on the under-flooring, and the under-lining of the roof.

Mr. Durbrow: I would like to ask you if you can state what, in your opinion, is the additional expense of maintaining a refrigerator car over and above the average cost of maintaining an ordinary box car?

Mr. Yates: Well, I am not altogether familiar with the maintenance of a box car, other than personal observation of the construction; but my opinion would be that it was three times greater to maintain a refrigerator car than it was a box car, owing to the fact that a refrigerator car always goes through our repair yards and is thoroughly overhauled before replacing for loading a second time, which is not the case with a box car.

Mr. Durbrow: And in renewing this insulation, which deteriorates because of the condensation caused by the ice, is it necessary
946 to tear out the lining of the car or the outside of the car?

Mr. Yates: Yes, sir; we have to tear it out clear through.

Mr. Durbrow: And I understand that every time these cars are returned to California for loading they are completely overhauled?

Mr. Yates: Completely overhauled.

Mr. Durbrow: Their refrigerating device is overhauled?

Mr. Yates: Yes, sir.

Mr. Durbrow: As well as the other parts of the car?

Mr. Yates: Yes, sir.

Mr. Durbrow: Now, I would like to ask you what effect the dropping of ice from the hatches into the bunkers onto the grates has upon the car?

Mr. Yates: Well, dropping ice in large cakes invariably breaks the ice grates, and the ice grates show a deflection on the under part of the car, which is expensive. We have a great many cars now under repairs for this defect.

Mr. Durbrow: Then, does the weight of the ice in the extreme ends of the cars have any effect upon the cost of maintenance, increase the cost of maintenance?

Mr. Yates: Well, it does. The ice, of course, is a concen-
947 trated load in the ends of the car, and naturally, with the buffing strain of the car, is one cause of this deflection. We have figured that out from a mechanical standpoint. That is one of the causes of the defect in the under-frame of our car.

Mr. Durbrow: That is all.

Cross-examination:

Mr. A. F. Call: Do you keep a record of the cost of the repairs on the P. F. E. cars?

Mr. Yates: Well, yes, sir, it is kept. We don't keep it in our office.

Mr. Call: Who keeps it?

Mr. Yates: That is generally kept in our general office.

Mr. Call: Is it accessible to you?

Mr. Yates: No, sir.

Mr. Call: Do you know what that is?

Mr. Yates: No, sir.

Mr. Call: Do you know what your average cost is per annum?

Mr. Yates: No, sir.

Mr. Call: Do you know anything about what the average cost is of taking care of a box car per annum?

Mr. Yates: No, I don't; only from——

948 Mr. Call: Have you ever seen a compilation of the figures?

Mr. Yates: No, sir.

Mr. Durbrow: We have the figures.

Mr. Call: Of the actual cost?

Mr. Durbrow: Not of each, but of the cost of maintenance of the cars per year. We can segregate it.

Mr. Call: Do you mean the average of all your cars and the average cost of your refrigerator cars? Will you produce that?

Commissioner Prouty: Are these cars of the Pacific Fruit Express maintained by the railroad company or by the Express?

Mr. Durbrow: By the Pacific Fruit Express, your Honor.

Commissioner Prouty: You can show the cost of maintenance of these cars?

Mr. Durbrow: Yes, we can do that.

I would like to ask you, in that connection, if it is not a fact that these cars haven't shown the depreciation that you would expect to find over a course of years because they are all comparatively new?

Mr. Yates: Yes, sir.

Mr. Durbrow: That makes quite a difference also, does it?

Mr. Yates: Yes, sir.

Mr. Call: Will you furnish that average cost?

949 Mr. Durbrow: I will be very glad to furnish it. I think we have figures now that we can avail ourselves of in compiling it. It is an oversight on my part not to have it now.

Mr. Call: Do you know what has been the report upon the cars at the end of the line?

Mr. Yates: Nothing but the ordinary inspectors' report in a railroad at a terminus.

Mr. Call: They all go under inspection?

Mr. Yates: Yes, sir.

Mr. Call: The same as your own cars?

Mr. Yates: The same as our own P. F. E. Cars are handled by the different railroad companies.

Mr. Call: Well, then, your idea is that the more ice that is used in a car the more repairs it would require?

Mr. Yates: Yes, sir.

Mr. Call: The more frequently it is iced?

Mr. Yates: Well, no. Not the ice in the car; the condensation from ice in the car due to excessive heat on the outside.

Mr. Call: Then, a car that carried refrigeration on every trip—for instance, a commodity that required refrigeration on every trip, would be more detrimental to a car than a commodity which only carried it a part of the time, say?

950 Mr. Yates: Well, the dampness in the car, if it was continued.

Mr. Call: So, you would consider that the more the refrigeration the worse it is on the car?

Mr. Yates: Yes, sir.

Mr. Call: Say, for instance, you take an article like deciduous fruit, that requires pre-cooling for every car and refrigeration for every car—that would be a greater injury to the car than a commodity like lemons, that only require refrigeration a quarter of the time or for twenty-five per cent of the commodity moved?

Mr. Yates: Yes. The oftener the car is put under refrigeration the more damage it does to the insulation of the car.

Mr. Call: Yes. And, so far as you know, the moving of citrus fruits in a car of that kind does not do any more injury than the

moving of vegetables, and celery, and melons, and apples, and such things as that?

Mr. Yates: If they were not put under refrigeration.

Mr. Call: No. It is the refrigeration and not the character of the commodity that you are speaking about?

Mr. Yates: Yes, that is it.

951 Mr. Call: It is the refrigeration that does the damage?

Mr. Yates: Yes.

Mr. Call: And that damage, of course, is lessened by your varnish, isn't it?

Mr. Yates: No, sir. We varnish to remove the stains—keep up the appearance of the car, principally.

Mr. Call: Yes. And this insulation that you use—is that susceptible to moisture? Does it take up moisture?

Mr. Yates: Yes, sir; you can take up moisture, due to the condensation around the ice tank; but it is not taken up through the center of the car. You will understand that the refrigeration in the lining of the car is generally caused from back of the lining, not on the inside next to the ice—on the back side of it.

Mr. Call: This method of dropping the ice into the bunkers, that you speak of—is that necessary—that it should be dropped?

Mr. Yates: Well, it is invariably dropped.

Mr. Call: It is dropped sometimes, I suppose, by the people having charge of the icing?

Mr. Yates: Well, by those, at times; but our own men, you know, are cautioned to cut this ice up in smaller pieces to start in

952 on these ice grates, to prevent breaking. But take one inexperienced in icing the cars, he will drop in a whole cake of ice, 300 pounds of ice.

Mr. Call: Well, do they drop it?

Mr. Yates: Yes, sir.

Mr. Call: Do you know they drop it?

Mr. Yates: Yes, sir.

Mr. Call: How do you know?

Mr. Yates: We know, by the effects on the car, that it has been dropped, by the breaking of the grates. They are made of oak, and it takes a very hard blow to break them.

Mr. Call: Do you know the numbers of the cars or have you any records of any kind?

Mr. Yates: We could get that, yes.

Mr. Call: Have you got it?

Mr. Yates: No, sir.

Mr. Call: Will you give me the numbers of the cars that you think were injured in that way?

Mr. Yates: I can do it.

Mr. Call: Well, will you agree to do it?

Mr. Yates: Yes, sir.

Mr. Call: I would be glad to have that list of cars that you

953 think were injured by dropping the large cakes of ice. You have not any judgment or knowledge with regard to ap-

proximately what the average cost is of taking care of a refrigerator car?

Mr. Yates: No, sir. I just have it from our own shops.

Mr. Call: You don't know anything about it at all—what the average cost is?

Mr. Yates: I know from our own shops, but don't have the information for foreign lines in comparison with these cars.

Mr. Call: Well, do you know what it is in your own shops?

Mr. Yates: Yes, sir.

Mr. Call: What is the average in your own shops?

Mr. Yates: Yes, sir.

Mr. Call: What is it?

Mr. Yates: I would have to look that up. We have it in our records.

Mr. Call: But you haven't any approximate knowledge of it now in mind?

Mr. Yates: No.

Mr. Call: Well, then, how are you able to form any notion of it?

Mr. Yates: From experience.

854 Mr. Call: If you have no knowledge what it is, how can you form any idea or judgment at all whether it is greater or less?

Mr. Yates: From the experience I have had with the cars for the long time they have been in service.

Mr. Call: But you say you have not taken care of box cars generally?

Mr. Yates: Well, I am connected right with the care of them all the time; I know what inspection they are subjected to, compared with a refrigerator car.

Mr. Durbrow: While you don't know the cost, you may know the quantity and amount of material used in the repairing of those cars to be considerable?

Mr. Yates: Yes, sir.

Mr. Call: But you don't know how often the same car is repaired during the course of a year?

Mr. Yates: I do, our own cars.

Mr. Call: Have you got charge of that record?

Mr. Yates: I have charge of it through our Southern California shops.

Mr. Call: Well, now, for instance, what does it ordinarily cost to repair a car—to inspect and repair a car?

Mr. Yates: It varies a great deal with respect to the extent
855 of the damage. All the way from three to forty dollars each trip.

Mr. Call: Three to forty?

Mr. Yates: Yes. That would be my understanding.

Mr. Call: How many trips do they make in the course of a year?

Mr. Yates: I couldn't tell you that.

Mr. Call: Do you know how long it takes to make a trip usually?

Mr. Yates: No, sir.

Mr. Call: You don't know how often the same car comes back into the shop during the course of a year?

Mr. Yates: No, I can't tell that. They vary. When a car goes out of a shop here it may come back to northern California.

Mr. Call: How many of those cars have you?

Mr. Yates: We have about 7800 of them in service now.

Mr. Call: Now, what does it cost to change over one of your P. F. E.'s, under your ordinary style of construction, to the collapsible style?

Mr. Yates: Well, that I could not say. We haven't changed any of them over.

Mr. Call: Well, what would you judge?

956 Mr. Yates: It would be very expensive. We would have to make the preparation for it in the super-structure of our car. These collapsible bunkers are especially designed, and that provision is taken care of in the original construction.

Mr. Call: Well, what is the peculiar feature you would have to add to it?

Mr. Yates: We would have to tear out the entire——

Mr. Call: Tear out that partition between in that make of car?

Mr. Yates: Tear out the lining to put in the reinforcing of the roof. It would be very expensive. I couldn't say.

Mr. Call: You couldn't say anything about that?

Mr. Yates: No, sir.

Mr. Durbrow: Could you approximate what it would cost?

Mr. Yates: Approximately about $150 a car.

Mr. Call: And you think the addition to these collapsible bunker features would cost about $60 more than the ordinary construction?

Mr. Yates: In the first construction; and to work them over it would cost from a hundred to a hundred and fifty dollars.

Mr. Call: Then, to work them over, it would cost double

957 what the original cost of construction would be?

Mr. Yates: Yes, sir.

Mr. Call: And there is nothing in the construction of the car to prevent its being done as effectively, if is, as it would be in the original construction? You could do it?

Mr. Yates: Well, it could be done. But the walls on those cars with the stationary bunkers are not quite as thick as they are on the ones with the collapsible bunkers.

Mr. Call: That is, you have learned to put in a little more insulation; with your new cars you put in so much insulation so as not to require the shipper to put in so much paper?

Mr. Yates: I don't think it is necessary to put in any paper with any of them.

Mr. Call: Don't you know it will freeze if they don't do it?

Mr. Yates: No.

Mr. Call: You know that they put in the paper?

Mr. Yates: I know that some of them have put in paper.

Mr. Call: And your idea in your later cars is to put in more insulation to obviate that, wasn't it?

Mr. Yates: That was not my idea.

Mr. Call: Well, what was your idea in putting it in, then? Why didn't you leave them as they were?

Mr. Yates: To try and prevent the condensation as much as possible. Every insulation, under our theory, would stop, to a certain extent, the condensation.

Mr. Call: In what way would it stop it?

Mr. Yates: Well, experience has taught us that the heavier you insulate the less the condensation is; and that is what we are experimenting with. We don't know it to be a fact.

Mr. Call: You didn't do it to keep them warm in cold weather so much as you did to keep them cold in warm weather?

Mr. Yates: We don't think it is necessary. We think our present cars are plenty heavily insulated to take care of it.

Mr. Call: You think it is all right to keep it cold in warm weather and warm in cold weather as they were?

Mr. Yates: Yes, sir.

Mr. Call: Then why would the insulation interfere with your remodeling of the cars?

Mr. Yates: The insulation would not interfere. We would have to tear out the lining of the cars to put in our extra supports.

Mr. Call: That is, you would have to take out your lining and put in the supports?

Mr. Yates: Yes, sir.

Mr. Call: And that would be covered in your estimate of the cost? It is entirely feasible, is it, if you pay the cost?

Mr. Yates: Yes.

Mr. Call: Do you know what a refrigerator car costs?

Mr. Yates: About $1,600.

Mr. Call: What does your improved box car, the box car you are constructing now, cost?

Mr. Yates: I could tell you exactly what they cost. I know what our settlements cost us when they are destroyed—from seven to nine hundred dollars.

Mr. Call: Do you know what the weights are of your refrigerator cars?

Mr. Yates: Forty-four to forty-seven thousand pounds.

Mr. Call: What is the weight of your modern box cars?

Mr. Yates: Thirty-two to thirty-six.

Mr. Call: Your P. F. E. cars are somewhat heavier than the R. F. E?

Mr. Yates: Well, some are.

Mr. Call: They will average heavier?

Mr. Yates: Some of the Santa Fe's are heavier than ours.

Mr. Call: The average of your car is heavier than the average of the R. F. E., the P. F. E.?

Mr. Yates: I can't say how many of the heavier cars the Santa Fe has.

Mr. Call: Well, do you find it necessary to make them that weight to give them strength?

Mr. Yates: Yes.

Mr. Call: And they are made that weight in order to take the load and make the speed and perform the service with the least loss?

Mr. Yates: That is it.

Mr. Call: That is all.

Redirect examination:

Mr. Durbrow: You say that it costs you about $150 to convert one of these cars with the fixed bunker into a car with a collapsible bunker. I want to know if that includes the cost of the bunker itself?

Mr. Yates: No. Those bunkers are a patented device. That is the cost to us, to our shops.

Mr. Durbrow: That is the cost to your shops merely, this $150, of furnishing the car?

Mr. Yates: Those bulkheads are a patented device. They
961 are furnished by a firm. They are bought independently of them.

Mr. Durbrow: So that the bunker and the necessary parts of the bunker which you would use to fix up the roof of the car or to keep it in place for refrigeration, would be an extra charge?

Mr. Yates: Yes.

Mr. Durbrow: Do you know how much that would be?

Mr. Yates: Indeed I don't.

Mr. Durbrow: That is all. I thank you.

Mr. Call: That is all.

Commissioner Prouty: How near air-tight is one of your refrigerator cars?

Mr. Yates: It is our aim to keep them absolutely air-tight with the exception of the water-seal.

Commissioner Prouty: When the water-seal works properly, or when it is filled with water, that would be air-tight?

Mr. Yates: Yes, sir.

Commissioner Prouty: So that if the car is in order it is practically air-tight?

Mr. Yates: Yes, sir.

Commissioner Prouty: Have you ever made any experi-
962 ment to know how the temperature of that car be maintained, or is maintained, when the car stands still?

Mr. Yates: No, sir.

Commissioner Prouty: Never filled up the bunkers and allowed the car to stand still to see how long the ice would take in melting?

Mr. Yates: Yes, sir.

Commissioner Prouty: Do you know whether the ice melts more rapidly when the car is in motion or less fast?

Mr. Yates: Well, I should judge it would melt more rapidly on account of the torsion of the car, which would keep the ice shaken down.

Commissioner Prouty: Do you think it would melt more rapidly for any other reason? Would the motion of the car through the air tend to change the air in the car, do you think?

Mr. Yates: No, sir; I don't think it would.

Commissioner Prouty: Is it your opinion that this collapsible bunker is a practicable thing?

Mr. Yates: Well, no, sir; I don't.

Commissioner Prouty: For what reason?

Mr. Yates: Well, the expense of maintenance is very great
983 on it.

Commissioner Prouty: As the car with the collapsible bunker comes into your shop, do you find that the bunker is out of order—likely to get out of order?

Mr. Yates: Yes, sir; we find a great many of them out of order.

Commissioner Prouty: And what thing about it gets out of order?

Mr. Yates: Well, the principal feature is someone loading them down without first putting down the ice grate. Leaving no support at the bottom for the ice, the natural weight of the load will break them in at the bottom.

Commissioner Prouty: If the bunker is handled by someone who understands it, if it is lifted up and put down properly, is there any trouble with it?

Mr. Yates: Well, no; there is no particular trouble with it if it is properly handled by experienced men.

Commissioner Prouty: So that, you think if it were handled by men that understood it it might be all right, but if handled by men that are not careful or don't understand it it would be liable to be damaged?

Mr. Yates: Yes, sir.

984 Commissioner Prouty: Do you understand that the purpose of that collapsible bunker is to permit the loading of oranges or lemons or to permit the heavier loading back?

Mr. Yates: It is to permit the heavier loading back—the potato shipments.

Recross-examination:

Mr. Call: Where did you get that latter idea? What is the purpose of it?

Mr. Yates: What is that?

Mr. Call: Where did you get that idea as to the purpose of constructing those collapsible bunker cars?

Mr. Yates: That was the instructions from our manager. The mechanical department was authorized to use them if they could be applied to our cars.

Mr. Call: But was the commodity to be moved specified?

Mr. Yates: Well, nothing, only in a general way. In common conversation I asked them the idea, and I found it was to take care of westbound fruit, dry merchandise, potato loading.

Mr. Call: Do you know of any reason why they are not equally available to citrus fruit under ventilation?

Mr. Yates: Oh, I don't know.

985 Mr. Call: You don't know anything about that?

Mr. Yates: No, sir.

Commissioner Prouty: You know how oranges are loaded in a car?

Mr. Yates: Yes, sir.

Commissioner Prouty: Now, is there any reason why that collapsible bunker might not be thrown up into the upper part of the car and oranges loaded underneath?

Mr. Yates: No, there is no reason.

Commissioner Prouty: That would not injure the value of the car at all?

Mr. Yates: Not if they were properly loaded and no nails driven in the ice-tank.

Commissioner Prouty: Would it be possible to put strips across the ice-tank in the same way the balance of the car is stripped?

Mr. Yates: If they punctured the galvanized lining it would.

Commissioner Prouty: But the amount of the ice itself would not injure it anyway?

Mr. Yates: No, sir.

Mr. Call: You have got that fixed so there could not be
966 anybody drive a nail through that lining, haven't you?

Mr. Yates: No, sir.

Mr. Call: What is the lining made of?

Mr. Yates: Twenty-two galvanized iron.

Mr. Call: Do you think it is possible to drive a nail through that?

Mr. Yates: Yes, sir.

Mr. Call: Have you ever seen any of them with nails through them?

Mr. Yates: Yes, sir.

Mr. Call: You have seen nails through them?

Mr. Yates: Yes.

Mr. Call: Well, the floor of that space is also covered with iron, is it?

Mr. Yates: Yes, sir.

Mr. Call: And there is no occasion for injuring the floor in loading that freight, is there, in boxes?

Mr. Yates: I should not think so.

Mr. Call: And there is no occasion for nails in it, is there?

Mr. Yates: Not if it is properly loaded, no.

Mr. Call: That you know anything about?

967 Mr. Yates: No. sir.

Mr. Call: When the cars leave your shops, in what position are those partitions, those grates?

Mr. Yates: Well, for a while we left them up, folded up to the roof. Now we are putting them all down.

Mr. Call: When did you get that order—to put them all down?

Mr. Yates: Oh, we got that order some time ago.

Mr. Call: How long ago?

Mr. Yates: Two or three weeks ago.

Mr. Call: And your first order was to put them all up, wasn't it?

Mr. Yates: Yes.

Mr. Call: And when you furnished these cars the first time they went out, they were all up?

Mr. Yates: Yes, sir.

Mr. Call: And then recently you got an order to put them down?
Mr. Yates: We got an order to leave them up, and then I got an order to put them up again.
Mr. Call: When did you get that last order?
Mr. Yates: I got that last order, to put them down, about
968 three weeks ago.
Mr. Call: How long ago did you get the last order, to put them up?
Mr. Yates: Well, I should judge a month ago.
Mr. Call: The last order to put them up?
Mr. Yates: Yes. We had an order the first of January to leave them up, and then shortly after that I got an order to put them down.
Mr. Call: Yes.
Mr. Yates: And then I got an order along about the first of February—no; along about the middle of January, I guess it was—to put them up.
Mr. Call: Yes.
Mr. Yates: And then I got an order, about three weeks ago, to put them down.
Mr. Call: You got an order to put them down, and that is the last order, is it?
Mr. Yates: The last order.
Commissioner Prouty: Wouldn't it be your idea, from what you know about the shipment of oranges, that when there was no prospect of a car being used as a refrigerator car the bunkers should be
969 left up and oranges loaded the whole length of the car, but when there was a possibility that you might desire to ice the car that then it would be necessary to have the bunkers down so that you could ice them?
Mr. Yates: Yes, sir.
Commissioner Prouty: Because when the oranges are in there you could not put them down?
Mr. Yates: Yes, sir.
Mr. Durbrow: That was the season of the year when they would move that way?
Mr. Yates: Yes, sir.
Mr. Call: So that they were put up for citrus fruits, weren't they?
Mr. Yates: They were put up.
Mr. Call: They were put up?
Mr. Yates: I don't know whether they were put up for citrus fruits.
Mr. Call: But for all fruits moved in those cars?
Mr. Yates: I just had instructions from the operating department to put them up.
Mr. Call: All cars?
Mr. Yates: All cars.
Mr. Call: Not alone for potatoes, but for all cars?
970 Mr. Yates: Well, all collapsible tanks.
Mr. Call: All collapsible tanks, yes.
Mr. Yates: That is it.

Mr. Durbrow: That is all.

I have prepared here, your Honor, some statistical data that was called for by the complainants. They made the request upon the Pacific Fruit Express, and we have complied with it as nearly as we could. I think we have answered nearly all of their demands, and I have bound it together loosely, with such statements as will be introduced by Mr. Mortensen on his examination, and I would like to hand a copy of this to the Commission in order that they may have it and have an opportunity to inspect it. And we will ask to have the entire statement and exhibits contained in that loose binding introduced and marked exhibits in accordance with their numbers.

Mr. Call: Give us an opportunity to examine it first.

Commissioner Proutv: Introduce the exhibits one by one, or let the other side look them over.

Mr. Durbrow: I will introduce them one by one.

Commissioner Prouty: You may look at them hastily, and if you desire to have it held up, that may be done.

971 A. M. MORTENSEN was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Durbrow: What is your business, Mr. Mortensen?

Mr. Mortensen: District agent of the Pacific Fruit Express.

Mr. Durbrow: Stationed at Los Angeles?

Mr. Mortensen: Stationed at Los Angeles.

Mr. Durbrow: How long have you been engaged in the refrigeration business?

Mr. Mortensen: Six years and a half.

Mr. Durbrow: And will you tell us briefly what your duties are with reference to this refrigeration business?

Mr. Mortensen: I have charge of the distribution of all the cars in this district, and the assembling of them here for the citrus business and vegetable business, the gathering of data as to our prospective requirements, and so forth; in charge of the records of the business in this district.

Mr. Durbrow: I would like to ask you if you know how many cars the Pacific Fruit Express has in operation at the present time?

Mr. Mortensen: About 7800.

Mr. Durbrow: And how many will you have when their

972 present orders are filled?

Mr. Mortensen: 10,100 cars.

Mr. Durbrow: And those are all of a standard size, are they not?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: And there is some difference in the construction of the superstructure and one thing and another?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: And how many cars have you at the present time in operation that are equipped with the collapsible tank or bulkhead?

Mr. Mortensen: About 800, I believe.

Mr. Durbrow: And do you know the value of the equipment of the Pacific Fruit Express that is now in use?

Mr. Mortensen: About thirteen to fourteen million, I believe.

Mr. Durbrow: You are familiar with this new device, this collapsible bulkhead, Mr. Mortensen?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: I would like to ask you, please, if you can tell us, why that device was adopted by the Pacific Fruit Express?

973 Mr. Mortensen: It was adopted, primarily, for the protection of potato loading from Idaho, Utah and Colorado points, and also to assist in westbound loading to the larger capacity of westbound loading of certain commodities.

Commissioner Prouty: The potato loading to which you refer is from those points east?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: By the way, the Pacific Fruit Express does the refrigeration service for the Salt Lake Line as well as the Southern Pacific, does it not?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: And furnishes the cars to that line, and pre-cools and ices those cars that are routed over the Salt Lake Line?

Mr. Mortensen: Yes, sir; our station at Colton is a joint station of the Southern Pacific and Salt Lake Lines—one side is occupied by the Salt Lake Line and the other by the Southern Pacific.

Mr. Durbrow: You say the Pacific Fruit Express cars were equipped with this collapsible tank so that you could carry this dry freight in them to the full available space of the car at your command, and also to enable you to return the cars from the east under full load?

974 Mr. Mortensen: Yes, sir.

Mr. Durbrow: In that particular, I would like to ask you if it was necessary to provide these collapsible bulkheads for that particular purpose—for the return loads?

Mr. Mortensen: Well, not necessary as a general thing, as we have always had a great deal more westbound loading space than was necessary.

Mr. Durbrow: Now, I would like to ask you, please, if you can tell us what the shippers have done with reference to loading these collapsible cars, the cars with collapsible bulkheads? How have they accepted those cars?

Mr. Mortensen: We have had a great deal of difficulty in getting them loaded eastbound. After the cars began to come into the citrus service, I was instructed to try and secure citrus loading that was moving under ventilation in the cars with the bulkheads raised, and I accordingly instructed our repair department to send the cars—or let the cars leave their yards with the bulkheads up; and I sent solicitors among the citrus loading stations, and I also went out personally, in an endeavor to get the cars loaded. We met with a great deal of difficulty; in fact, I think we worked at least ten days after the instructions before I got one car loaded that way, and 975 perhaps a week or so afterwards before I got the second one loaded. Their great objection was that so many of the cars,

the citrus loads, are started out to uncertain destinations and the shipper might desire to change the destination from a large consuming point to a smaller one, and under these conditions the 468 boxes would be too much of a load to put into a small station or small district. We have had the cars in service since last December, some of them, and although there has been some six or seven hundred on the Coast, we have only had about one hundred loaded. Eighty-two of those were loaded by the California Fruit Growers' Exchange's representatives, the balance of eighteen loaded by independent shippers; and most of them have been loaded within the last three or four weeks.

Mr. Durbrow: How do you account for the fact that these cars haven't been loaded except within the last three or four weeks?

Mr. Mortensen: Well, I don't know. The Exchange didn't take kindly to them until three or four weeks ago; and I thought perhaps they have tried them out for the purpose of this suit.

Mr. Durbrow: Yes. Have the shippers, as a general rule,
976 objected to loading the cars with the tanks collapsible because of the fact it would increase the minimum shipment and they objected to that because they wanted to send out these tramp cars and try these different smaller markets as it became necessary?

Mr. Mortensen: Yes. In fact, I have had a number of shippers tell me, and one or two write me, that they would positively refuse to load a car with the tanks up, and we have had in those particular cases to see that they were not furnished with the car.

Mr. Durbrow: Yes.

Mr. Mortensen: We had one shipper, one of their men, in handling the bunkers, severely injure his finger; and after that they refused to handle them.

Mr. Durbrow: With reference to the return of these cars to the shipping points here in California, can you tell us approximately what percentage of those cars move westbound empty?

Mr. Mortensen: Seventy-four per cent in 1908 and 1909, and seventy-five per cent in 1907 and 1908, I believe.

Mr. Durbrow: Yes. Now, why is it that so many of these Pacific Fruit Express cars move westbound empty?

Mr. Mortensen: Well, I believe the principal reason is the
977 fact that the demand for the cars here is so great at times that in order to get them here to take care of the eastbound loading we have to run them west in special trains and if they were held for westbound loading it would delay them and scatter them throughout the country so much that we would not be able to take care of the business with our present equipment.

Mr. Durbrow: And is it not also a fact that the construction of the car itself and the use to which it is put prevents you loading them in many instances when they are destined to California points?

Mr. Mortensen: Yes; there are a great many commodities that are detrimental to the car and a great many commodities that the car is detrimental to; there are also a great many commodities that cannot be loaded into them on account of the small side doors.

Mr. Durbrow: Small side doors. Well, now, right in that connection, is it feasible or practicable to make these doors any larger than they are now?

Mr. Mortensen: I don't think so.

Mr. Durbrow: Why not?

Mr. Mortensen: For the reason that the doors are very
978 heavy and if you are going to make a very large door they would be very hard to handle and very hard to keep up; and also from the fact that when the side doors are opened for inspection, of cars under refrigeration, the larger the door the quicker we lose the refrigeration in the car.

Mr. Durbrow: Have you a list of the commodities that in your opinion can not be loaded into the car either because they would injure the car or because the commodities themselves would be damaged by reason of the dampness in the car?

Mr. Mortensen: Yes, sir, there is such a list.

Mr. Durbrow: I ask to have this marked Defendants' Exhibit No. 9. I won't ask him why these articles cannot, because I think the statement is self-explanatory.

(The list referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 9, received in evidence March 28, and same is attached hereto.)

Mr. Durbrow: Now, with reference to the movement of these cars eastbound under load with the tanks collapsed. You have stated that shippers object to loading those cars to their full capacity by means of these collapsible bunkers because they object to loading a large number of boxes in the cars. I want to ask you if
979 the shippers objected to loading these cars there because they felt that it might become necessary because of climatic conditions to refrigerate the cars in transit even though they had started from here under ventilation?

Mr. Mortensen: Well, at the beginning of the season, taking January and up to February 15th, there was very little danger of that, so far as citrus fruit was concerned. After that however, it would be dangerous to load a car in that way for the reason that a shipper might desire to put it under refrigeration en route. In fact, I instructed our repair department, about three or four weeks ago, to place all cars with the tanks down, because the shippers have generally started icing.

Mr. Durbrow: Now, if a shipment moved out of California under ventilation and it became necessary to refrigerate that shipment en route and the tanks were collapsed, what would be necessary? You would have to remove the entire load from the car, would you not?

Mr. Mortensen: Yes. The best way would be to provide another car—load it seven wide and two high.

Mr. Durbrow: Yes.

980 Mr. Mortensen: And then we would have some boxes left over.

Mr. Durbrow: And they would have to be put up on an upper tier, even at that?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: And the boxes would have to be taken out of the car—go into whatever climatic conditions you might find?

Mr. Mortensen: Yes.

Mr. Durbrow: Well, I have a statement here,—I would like to introduce a statement showing the cost of the icing and pre-cooling stations owned and operated by the Pacific Fruit Express at Las Vegas, Nevada, Roseville, California, and Colton, California,—the cost of the ice plant and the pre-cooling plant in each instance.

(The statement referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 10, and same is attached hereto.)

Mr. Call: Now, to shorten up this branch of the case, perhaps we might save time by making a record on this; that is, so far as our people are concerned, they have no objection to rules raising the minimum of this car or any other length car to any weight that it will contain loaded to the full length of the car six wide and two high under ventilation. In fact, we have loaded cars, since we have become acquainted with it at all—first, they didn't know exactly what it was; but since they have become acquainted
981 with it they have got them loaded, quite generally—excepting, perhaps, where they could not raise them, or something of that kind; but when they were raised up and furnished that way. And that would be, of course, when they are raised. It requires some mechanical effort to raise them up. But if they are furnished to us in that way we would not object to a tariff increasing the minimum load.

Commissioner Prouty: Now, suppose this time of the year, when you may desire refrigeration en route——

Mr. Call: Well, we don't require that.

Commisioner Prouty: You would not care to reserve that right?

Mr. Call: No. That is a thing we don't use.

Commissioner Prouty: You would be willing to say that you would either start your shipment under refrigeration or no refrigeration?

Mr. Call: We will start it that way or we will—ventilation or refrigeration, one or the other. That is such a rare case—refrigeration en route—that it is something that is hardly worth while considering in this connection.

982 Commissioner Prouty: Is there any tariff provision for refrigeration en route?

Mr. Durbrow: No, sir, your Honor.

Commissioner Prouty: What is the expense of refrigeration en route?

Mr. Durbrow: It is a $25 reduction east of El Paso.

Mr. Mortensen: Our general manager states in a note here that out of all our shipments, perhaps running up to thirty or forty thousand cars, this last two years it has not exceeded half a dozen

times in all that time where we have asked for refrigeration rates, and we can easily take care of that.

Mr. Durbrow: It is so insignificant that it is not worth considering.

Mr. Mortensen: I would like to make the statement that nearly every car that goes under refrigeration is placed under refrigeration en route. We do not place it under refrigeration at the initial loading station.

Commissioner Prouty: What do you mean by refrigeration en route?

Mr. Mortensen: At our first icing station, which is some distance and if the car is placed with the bunkers up a great many shippers might inadvertently load in that way and you desire to place
983 that car under refrigeration when they get to Colton or Los Angeles.

Commissioner Prouty: Suppose they were required to indicate to you when they wanted a car.

Mr. Mortensen: Well, they are not required to do that, and we have never been able to get them to do that.

Mr. Call: I do not think we have any shipper as idiotic as that, that would attempt to load a car to the full length of the car and then order it iced. We must be given credit for some sense.

Mr. Durbrow: So far as this question of minimum is concerned, and maximum loading of cars, we have practically left that behind so far as my examination of Mr. Mortensen is concerned, and we credit the complainants with some little sense, and with a good deal of sense, and I am not surprised to find Mr. Call here urging an increase of this minimum, because I think the evidence discloses here that it is the purpose of this Exchange, which represents the largest number of shippers here, to concentrate their efforts to build up a concern which will force the smaller shippers to come in here. Now, so far as the traffic officials are concerned, I am advised that they have no objection to increasing the minimum of these
984 cars and permitting the shippers to load their shipments to the full length of the cars with the bulkheads collapsed when such is necessary. But I think the Commissioner should give some consideration to the small shippers not wishing to load the car to this minimum, and I am merely making this suggestion that that should be taken into consideration, but so far as the carriers are concerned, of course, it suits their purpose to have the largest weight possible loaded into the cars, so that they can be safely carried.

Mr. Call: The smaller shipper don't ship a smaller car; it is only a smaller shipment in the number of cars he ships, not in the size of the car. We have had some experience along that line, and I think the Exchange, speaking—perhaps I may know more about the experience of the Exchange than I do of the independent shippers—but we have had that question up for several years under discussion and gathering data, and there was a time when the judgment of the Exchange thought that it was helpful to have a smaller minimum for that purpose, to send it to the cross-roads distributing points, but we have come to the conclusion in late years that it is

desirable for the business with the greatly increased quantity
985 of business that we should put so much fruit as we can in a place. It makes them sell it. Instead of giving them a car with 312 boxes it is desirable to give them a car with 400 boxes, and they work harder to sell it, and we think it is desirable for the interest of the whole business to give them as much fruit as they will take. If they cannot buy a small car they will buy a large one, and it gets more men to work distributing the fruit, and it is our main object in *those* whole business to distribute the fruit and get the people to eating it. That is the whole aim and object of all this organization and co-operation, is to get people to eat fruit. Now, there is no controversy between the Exchange and the independent people. I know that the brothers on the other side have tried to stir up dissension, but they have not succeeded, and they are pretty well united. Our experiences have led us to about the same conclusions, and it would be very unwise to stir up any strife between the independents and the Exchange, except as to that one concern, which I do not speak for.

Commissioner Prouty: You say you represent in this case ninety per cent of the citrus fruits of California?

Mr. Call: Ninety per cent of the citrus fruits of California.

986 Commissioner Prouty: So far as your clients are concerned you made no objection to loading the length of the car, whatever that is, six boxes wide and two high?

Mr. Call: Six boxes wide and two high; and there is some of the remaining ten per cent that are with us in this matter, that for some reason did not join in this suit, because of absence or something like that. So far as I know there is only one concern in California that is really antagonistic to the growers, and we regard them as speculators. That is the Armour concern. Outside of that I do not think there is any one in the business that has a diverging view from the main body. They all have about the same view.

Mr. Durbrow: We have not attempted to stir up any strife here. The only strife stirred up in this case was when this gentleman was on the stand who represents the rival organization which has not seen fit to come in under the wing of this parent concern, and we do not want to stand here under the charge of stirring up strife. We do not want to do it, and I do not think we have done it.

Mr. Norton: Mr. Chambers remarks to me that the statement just made by Mr. Call has always been the carriers' statement, but in talking with the carriers the shippers have spoken just the
987 reverse of what he does now, namely, that they wanted a low minimum for commercial reasons.

Mr. Durbrow: Mr. Mortensen, how many pre-cooling and preicing plants has the Pacific Fruit Express?

Mr. Mortensen: Two in operation now.

Mr. Durbrow: Where are they located, please?

Mr. Mortensen: One at Colton, California, and the other at Roseville, California.

Mr. Durbrow: Those plants are practically duplicates, so far as their capacity and construction are concerned, are they not?

Mr. Mortensen: Yes, sir.
Mr. Durbrow: You also have an icing plant at Las Vegas?
Mr. Mortensen: At Las Vegas, Nevada.
Mr. Durbrow: Is that in operation at the present time?
Mr. Mortensen: Well, it could be operated, but while the storage rooms are full of ice we have no use for that on account of the fact that the Salt Lake road is out of business. We have some five or six thousand tons of ice stored there.
Mr. Durbrow: Have you any other manufacturing plants?
Mr. Mortensen: That is the only artificial plant we have.
988 We have a natural ice plant at Truckee and one at Carlin, Nevada.
Mr. Durbrow: Now, I would like to ask you if, when ice is manufactured at these different plants you distribute it to the various different points where the cars are iced en route under your care?
Mr. Mortensen: A great deal of it is so transported.
Mr. Durbrow: I would like to ask leave to introduce in evidence copies of the contracts that were called for by the complainants between the Pacific Fruit Express and these different icing concerns. They have called for them, but they have not introduced them in evidence.
Commissioner Prouty: In your case the Pacific Fruit Express Company buys its ice on its own account?
Mr. Mortensen: Yes. sir.
Commissioner Prouty: It doesn't buy it through the Southern Pacific?
Mr. Mortensen: No.
Mr. Call: We intended to offer those, but we have no objection to your offering them.
Mr. Durbrow: Well, those you have, some of them are originals. We cannot spare those, but we will have copies made and put
989 them in evidence.
Commissioner Prouty: Is it necessary to introduce the contract itself? Is it not sufficient to introduce some statement showing the prices?
Mr. Call: Just a table.
Commissioner Prouty: Some compilation showing the prices.
Mr. Durbrow: I think the contract should be introduced.
Commissioner Prouty: Well, you may introduce it if you desire.

(The paper above referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 11, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Durbrow: Now, with reference to this ice that is used by the Pacific Fruit Express in icing the cars that pass over the lines of the Southern Pacific and the Salt Lake road, do you have any means of determining the quantity of ice that will be needed for each particular season?
Mr. Mortensen: The only means we have is to judge by the amount—the percentage of ice the previous year, the condition of the fruit, and the extent of the crops for the season we are operating.

990 Mr. Durbrow: And the amount of ice that is consumed fluctuates, does it not?

Mr. Mortensen: Yes, very greatly.

Mr. Durbrow: From time to time?

Mr. Mortensen: In the year 1906-1907 there was fifty-six per cent of the citrus fruit from California shipped under refrigeration; in 1907-1908 there was thirty-eight per cent, I believe it was, and in 1908-1909 there was forty-four per cent. It shows quite a wide fluctuation, not only in that way, but there is also a great fluctuation as to route. As the shippers route the cars at times we can depend upon them routing one way, and we provide ice for that route. It is also necessary to provide for each route if we do not know what route the stuff is going to go under refrigeration.

Mr. Durbrow: So that, as I understand, it is necessary to have a supply of ice available to meet the needs of the shippers?

Mr. Mortensen: No matter what route they use.

Mr. Durbrow: And their needs vary from time to time?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: Now, since you have been operating the Pacific Fruit Express in this business have you had occasion to trans-
991 port any ice long distances to meet the necessities of the business?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: Just give one or two instances, please.

Mr. Mortensen: The first year that we operated we shipped ice from Los Angeles to Tucson, Arizona, shipped ice from El Paso to Tucson; then after the supply at Tucson became greater than was needed there, and the supply at El Paso was low, we had to ship ice from Tucson to El Paso. The year 1906-1907, during the operation of the Armour Car Lines, there was a great deal more ice shipped long distances than at any time I have known of. There was ice shipped from Portland, Oregon, as far as Los Angeles and Sacramento, and we shipped ice also that year from Las Vegas, Nevada, to El Paso, Texas.

Mr. Durbrow: Now, I would like to ask you with reference to the manner in which the cars are assembled. Can you assemble cars in any certain numbers with any degree of certainty that that number of cars will suffice for the needs of the business?

Mr. Mortensen: It is a pretty difficult thing to do. I have always tried to take the position of getting enough cars here, as if we do not have enough it is disastrous. In order to
992 arrange for the necessary supply we secure estimates from shippers, and also through railroad agents, and from personal knowledge of our own representatives, and assemble cars on that basis. Of course market fluctuations, et cetera, at times, and crop conditions and weather conditions regulate the output, with the result that at many times we have a great many more cars here than are necessary and at other times it is necessary to run special trains to get cars. For instance, last summer for a period of at least twenty or thirty days all of our empty car supply that reached California

was moved in special trains all the way from Chicago and other eastern distributing points.

Mr. Durbrow: I would like to ask you, please, if the estimates of the crop made by the growers to those exchanges or by the carriers are often times misleading to you where you rush cars here to supply an unusual demand at a particular time?

Mr. Mortensen: Yes, sir, they are.

Mr. Durbrow: In that connection I would like to introduce in evidence copies of two letters addressed to Mr. T. A. Graham, Assistant General Freight Agent of the Southern Pacific, situated at San Francisco, the letters being addressed to Mr. Graham by Mr. B. A. Woodford, General Manager of the California Fruit Growers' Exchange. The purpose of the introduction of those letters
993 is to show that the estimates from growers are often misleading to the carriers. They have a copy of this letter, and I would like to introduce this in evidence for that purpose. You have a carbon copy, Mr. Call, and if it is not correct you can make the necessary changes.

(The letter referred to, so offered, received in evidence and thereupon marked Defendants' Exhibit No. 12, received in evidence March 28, 1910, and same attached hereto.)

Mr. Durbrow: Have you prepared a statement showing the total shipments, by months, of Pacific Fruit Express cars via Southern Pacific Company and Salt Lake Railway, for the years 1908 and 1909?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: What does that average per month, please?

Mr. Mortensen: The average loading per month?

Mr. Durbrow: Yes.

Mr. Mortensen: 1,759 cars. That is all citrus fruit.

Mr. Durbrow: And it shows the average number of cars loaded daily?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: And I notice that in April, for instance,
994 there is 138 cars loaded, and in October there is 15.4 cars loaded per day, the average daily loading of the car.

Mr. Mortensen: Yes, sir.

Mr. Durbrow: And the statement shows that the number of cars that are loaded daily in each month may fluctuate and be more or less as the case may be.

Mr. Mortensen: Yes, sir.

Mr. Durbrow: I would like to introduce that statement in evidence.

Commissioner Prouty: Have you a statement of the same kind covering half a dozen years?

Mr. Durbrow: The Pacific Fruit Express has only been in operation during about two years.

Commissioner Prouty: But you have hauled the cars for more years than that. I thought your records as a railroad company might show that.

Mr. Norton: We can give you that.

Commissioner Prouty: To show the average movement in each month for a series of years.

Mr. Norton: I will have that done.

Mr. Call: That is fully shown in the evidence in the former hearing, down to that time.

995 Commissioner Prouty: Well, it may be sufficient if you will begin in 1904.

Mr. Norton: 1904 to date. Would you have it by months?

Commissioner Prouty: By months. I think if you can give the average daily movement per month——

Mr. Durbrow: Mr. Jones advises me he thinks we can obtain this data from some other source than our San Francisco office, and we would like to furnish a statement of that character, and with your Honor's permission we will do so.

Commissioner Prouty: The plaintiffs have already put in an exhibit showing the number of cars moved each week, I think, in a month, for one or two years, but it occurred to me that you could give us that statement for six years perhaps.

Mr. Call: Now, this testimony will be along the line of which is the better profit, to the growers or the railroads, or——

Mr. Durbrow: No, the purposes of the introduction of this statement is to show the fluctuation in the number of cars we are called upon to furnish at different seasons of the year. The statement I have introduced also shows the orange and lemon shipments segregated and the percentage of lemon shipments. But we are

996 unable to do that for a period of six years.

Commissioner Prouty: Well, that is hardly necessary. We want to simply show whether this is a business that is reasonably certain or whether it is a business that you know nothing about.

Mr. Call: If you haven't that compilation, we have it.

Mr. Durbrow: We will be glad to furnish it.

Commissioner Prouty: They should furnish you a copy, of course.

Mr. Durbrow: It will be subject to check, of course, by the complainants.

Mr. Durbrow: I would like to ask you if you will state the method followed by nou in assembling cars here in California for loading, eastbound, of this citrus crop?

Mr. Mortensen: Well, I endeavor as much as possible to keep in touch with the situation and learn the prospective number of cars needed for the following period of say fifteen or thirty days, and I then keep our general offices advised of that information and ask them to provide equipment accordingly.

Mr. Durbrow: And when the equipment has been furnished to you, how is it distributed throughout this southern territory?

997 Mr. Mortensen: Well, as the equipment arrives at the gateways and arrives, we will say, in southern California, of course it is first put through the repair yard and got ready for loading.

Commissioner Prouty: Does it all go to one place for the purpose of going through the repair shop?

Mr. Mortensen: It all goes, so far as southern California is concerned, either to Los Angeles or Colton. That equipment coming by the El Paso gateway is usually stopped at Colton for repairs, and that coming via the Ogden gateway is usually sent to Los Angeles for repairs and assembling and distribution.

Commissioner Prouty: Do you maintain repair shops at Colton?

Mr. Mortensen: Yes, sir.

Commissioner Prouty: And also at Los Angeles?

Mr. Mortensen: Yes, sir.

Commissioner Prouty: And your repairs are maintained by the fruit company and not by the railroad company?

Mr. Mortensen: By the Pacific Fruit Express Company.

Commissioner Prouty: Entirely distinct from your company?

Mr. Mortensen: Entirely different and separate, yes, sir.

998 Mr. Durbrow: Why is that?

Mr. Mortensen: Well, for the reason that fruit equipment requires much quicker and faster handling through repair shops than the ordinary railroad equipment, and we feel that on account of that we cannot handle it—we specialize, and we employ special labor, men who are familiar with repairing and handling refrigerator equipment. A man who would make a good repairman on a box car would not understand how to handle a refrigerator car.

Mr. Durbrow: Now, you have prepared a statement showing the number of P. F. E. cars moving westbound under load and empty for the season of 1907 and 1908 and for the seasons 1908 and 1909, showing the percentage of westbound empty movement as compared to the movement under load, and I would like to ask you if this is taken from the records in your office?

Mr. Mortensen: This is taken from the records in our office, yes, sir.

Mr. Durbrow: And prepared under your direction. We would like to have this introduced in evidence and marked Defendants' Exhibit No. 13.

(The statement referred to, so offered, was received in evi-
999 dence and thereupon marked Defendants' Exhibit No. 13, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Call: Will you supply us with copies of all these?

Mr. Durbrow: Yes, sir.

And this statement shows what percentage of empty movement westbound in 1907-1908, please?

Mr. Mortensen: It shows 74.8 per cent of all our equipment what came west was moved empty.

Mr. Durbrow: And for the year 1908-1909?

Mr. Mortensen: 7.5 per cent.

Mr. Durbrow: Now, can you tell me that number of Pacific Fruit Express cars containing citrus fruit that was moved out of California by the P. F. E. or any of the lines that operate your cars for the year ending October 31, 1908?

Mr. Mortensen: Well, we have such a statement, ending October

31, 1908. It is 14,358 cars. That is for the State of California, north and south.

Mr. Durbrow: And what was the season of 1909?

Mr. Mortensen: I don't seem to have that.

Mr. Durbrow: I have an impression it was 15,556. I wish you would verify that.

Mr. Mortensen: I think that is the correct figure.

1000 Mr. Durbrow: Can you tell me what percentage of these cars consisted of lemon shipments in 1908?

Mr. Mortensen: The season of 1908, 14.3 per cent consisted of lemon shipments.

Mr. Durbrow: And in 1909 what percentage of the citrus fruit crop moving eastbound consisted of lemons?

Mr. Mortensen: 12.8 per cent.

Mr. Durbrow: Now, you have also prepared a statement in your offices, showing the citrus fruit shipments made by the P. F. E. of oranges, lemons and grape fruit, moving iced or under ventilation, for the season of 1908-1909.

Mr. Mortensen: Yes, sir.

Mr. Durbrow: How many cars of lemons were moved by the P. F. E. or in their equipment in that year under ice?

Mr. Mortensen: 440.

Mr. Durbrow: Of oranges?

Mr. Mortensen: 7,761.

Mr. Durbrow: How many moved ventilated?

Mr. Mortensen: 8,272.

Mr. Durbrow: And how many cars of lemons moved under ice in that year?

Mr. Mortensen: 440.

1001 Mr. Durbrow: And how many cars of lemons moved under ventilation?

Mr. Mortensen: 1,873.

Mr. Durbrow: That data is compiled from statistics kept in your office, is it?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: I would like to have that introduced in evidence and marked Defendants' Exhibit No. 14.

(The paper referred to, so offered, was received in evidence and thereupon marked Defendant's Exhibit No. 14, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Mortensen: You understand that covers both Southern Pacific and Salt Lake.

Mr. Durbrow: I understand that. Please state, in a general way, what causes the fluctuation in the movement of shipments under refrigeration and ventilation?

Mr. Mortensen: The condition of the fruit, the condition of the markets, the weather conditions——

Mr. Durbrow: Now, you have prepared a statement showing the number of cars of the P. F. E. available for loading citrus fruit

on the first of each month during the years 1907-1908 and
1002 1908-1909.

Mr. Mortensen: Yes, sir.

Mr. Durbrow: What does that represent, please?

Mr. Mortensen: It represents the number of cars west of the gateways, known as El Paso, Ogden, and south of Ashland, Oregon.

Mr. Durbrow: That shows the number of empty cars that were available on the first of each month for loading west of the gateways?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: And that also is prepared from data contained in your office?

Mr. Mortensen: Yes, sir.

(The statement referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 15, witness Mortensen, and same is attached hereto.)

Mr. Durbrow: Can you give us the total pay roll of the Pacific Fruit Express, per month?

Mr. Mortensen: I have that here somewhere. How do you want it, segregated?

Mr. Durbrow: Well, whichever way you happen to have it.

Mr. Mortensen: General pay roll, $67,069.06. Our labor pay roll, $86,302.00. The total pay roll, general and labor, for icing and distribution of cars, $153,371.61.

Mr. Durbrow: For what period?

1003 Mr. Mortensen: For the period of one year.

Mr. Durbrow: Does that include the labor of putting the ice in the cars?

Mr. Mortensen: I think it does, yes, sir.

Mr. Durbrow: Now, will you please tell us how this refrigeration charge is constructed? What are the factors that have been taken into consideration in determining this refrigeration charge?

Mr. Mortensen: Of course I don't make up these rates, Mr. Durbrow, but in a general way I can say that the principal item, of course, is the ice consumed en route. I believe they figure something into it for carrying the ice, and the depreciation of cars on account of the car being under refrigeration, and the extra supervision necessary.

Mr. Durbrow: What do you charge up in your books to supervision?

Mr. Mortensen: Fifteen per cent.

Mr. Durbrow: What do you charge to depreciation of equipment?

Mr. Mortensen: Ten per cent.

Mr. Durbrow: And in icing these cars and taking care of them en route is there any additional expense by reason of the oper-
1004 ation of these cars under schedules and under expedited service?

Mr. Mortensen: Yes, sir, in order to maintain the fast schedules to the eastern destinations that is required in handling this business it is of course necessary for us in icing the cars to perform that service with as little delay as possible. Say, for instance, a train of thirty

or forty cars under refrigeration, we secure advance information at our various icing stations of the number coming and the time, approximately, they are to be there, a few hours previous to their arrival, and our ice is then gotten ready on the platform and our men are instructed to have everything in readiness the moment the train comes into the yard. The cars are put at the ice-house, and we must be ready to put the ice into the tanks immediately.

Mr. Durbrow: Now, will you please describe what service is necessary to move a P. F. E. car under load, refrigerated, from California to its eastern destination, taking Chicago, and Riverside I suppose would be a fair point to start from. Tell us exactly what service the Pacific Fruit Express renders.

Mr. Mortensen: In the first place, of course, as the cars come west, as I have said before, they are put through our repair shops,
1005 and then we will say the agent at Riverside requires a certain number of cars to load tomorrow. We will notify the dispatcher of the Southern Pacific at Los Angeles, or in some cases the shippers notify us direct of the number of cars required. The dispatcher then advises us, and the number of cars are checked over, and we make up the distribution sheet in my office and the car would then, on our order, be taken from the Colton repair yard and taken to Riverside and placed at the packing house of the man who is going to load this car. We will say the car for tomorrow's loading would be placed during the night some time, and would be at his packing house, ready for him, at 7 o'clock tomorrow morning. We will say the shipper loads the car that day, which he does sometimes and sometimes not——

Mr. Durbrow: How much time has he to load that car?

Mr. Mortensen: He has forty-eight hours to load the car.

Mr. Durbrow: When does demurrage begin to accrue—from the time the car is placed at his plant or from the time it is assembled in that vicinity?

Mr. Mortensen: From the time the car is placed, at his order, at his packing house. Very frequently we place cars at the packing house of shippers without their orders because we know they
1006 are going to use them and we have the cars here and we put them there. After loading of course the shipper would bill the car and the pick-up train, which in case of Riverside is a switch engine that is sent over from Colton that evening, would gather up the cars, and this car that would be under refrigeration would be at Colton about 8:30 in the evening.

Mr. Durbrow: What arrangements have the carriers in southern California here, so far as you are concerned, for assembling these cars at Colton? Do they have a schedule, engines going out on schedule and picking up the cars at the various packing houses?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: About what time do they begin to collect these cars and take them into Colton?

Mr. Mortensen: Well, I don't know of any case that the cars are picked up any earlier than 4 o'clock in the afternoon.

Mr. Durbrow: What time do they begin to pack down here in the morning?

Mr. Mortensen: They usually begin, I believe, at the packing house at 7 or 7:30.

Mr. Durbrow: And about what time in the evening have they accomplished packing and loading the car?

Mr. Mortensen: The packing houses usually close about 5
1007 or 5:30.

Mr. Durbrow: And the engines usually begin working about 4 in assembling these cars?

Mr. Mortensen: Just as soon after loading is completed as possible. At some stations they are a little later than others on account of having one engine pick up all the cars from a certain branch.

Mr. Durbrow: Now, after this engine has taken these cars from Riverside, for instance, into Colton, what is done there?

Mr. Mortensen: We place the car for pre-cooling.

Mr. Durbrow: What is the earliest in the evening that you begin pre-cooling shipments?

Mr. Mortensen: This car from Riverside would get to Colton about 8 or 8:30 and would be immediately placed at the pre-cooling plant, and we would be ready to start within thirty minutes from the time the car reached Colton. It would take perhaps from two to four hours to complete and attach twenty cars.

Mr. Durbrow: Four hours; does that include the pre-cooling and icing or simply the pre-cooling?

Mr. Mortensen: It includes the time necessary in coupling the cars up—or, first, in spotting the cars at the pre-cooling
1008 plant, coupling them up, pre-cooling them and icing them and coupling them and taking them away.

Mr. Durbrow: So that in that time you switch the cars in and couple them up, pre-cool them and ice them and switch them out again into the train?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: And that would require about four hours?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: Now, take the case of Mr. Edwards here, or Mr. Breher, who would require forty-eight hours to pre-cool their fruit, the car that would be handled through the pre-cooling plant at Colton would have been assembled by the engine, pre-cooled and iced and would be on its way within about what time compared with their forty-eight hours?

Mr. Mortensen: About twelve hours. That is on an average; in some cases less than that, and in other cases it would run over that.

Mr. Durbrow: But that would be a fair average?

Mr. Mortensen: I should think so.

Mr. Durbrow: So that the car would have from twenty-four to thirty-six hours, safely, leeway, and would be on its way to its eastern destination if handled through the plant at Col-
1009 ton?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: Now, after the car has been taken away from the

pre-cooling station and iced and placed in the train what service is involved after that?

Mr. Mortensen: Of course if a car is pre-cooled, you understand, we would not re-ice the car at Los Angeles. We will take this car going via the northern gateway. The car would come on through Los Angeles and would be checked, the billing would be checked by our representative and he would notify our next icing station, which is Bakersfield, of the numbers of the cars in any certain train out of here, and the time out of here, that are under refrigeration. Our man at Bakersfield would prepare for it and would have ice ready when the train got there. The car would be re-iced at that point.

Mr. Durbrow: Now, let me ask you if——

Mr. Call: Now, perhaps we might shorten up this branch of the case——

Mr. Durbrow: Well, I don't want to shorten up this branch of the case, your Honor, and we want to have the right to describe the movement of this car from California to its destination.

1010 Commissioner Prouty: Proceed.

Mr. Durbrow: I want to ask you, if when the car reaches Los Angeles and proceeds upon its journey—or when it reaches Colton, is there any telegraphic service involved in advising Los Angeles that the car has been pre-cooled and pre-iced?

Mr. Mortensen: Yes.

Mr. Durbrow: And the office advises the next icing station that the car must be iced at that particular station?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: And the agent at Bakersfield prepares to receive that car?

Mr. Mortensen: Yes, sir. After icing the car we would wire our agent at Roseville, giving him the number of the train and the time out of there and the number of cars under refrigeration in the train, and the same operation would be performed at Roseville, and again at Truckee, California, again at Carlin if necessary—Carlin, Nevada, and again at——

Mr. Durbrow: What do you mean by "if necessary?"

Mr. Mortensen: Well, the cars would be inspected, and if the tanks of the car did not contain sufficient ice in our agent's judgment to take it to Ogden or Evanston he would re-ice the car at that

1011 point. He has instructions to inspect the car.

Mr. Durbrow: Do your statements show what part of the citrus fruit traffic you handle by the Ogden gateway and what part is handled by the El Paso gateway?

Mr. Mortensen: We can give that very readily. Quite a per cent.

Mr. Durbrow: If it doesn't show it, I think it would be very well to show that, and we will have our statement prepared in that form.

Commissioner Prouty: About what part of the traffic do you think moves by Ogden?

Mr. Durbrow: You mean on the Southern Pacific?

Commissioner Prouty: I mean on the Southern Pacific.

Mr. Mortensen: Well, I should say about thirty or forty per cent

of it. Now, of course, with the Salt Lake road out of business the percentage might be a little lower.

Commissioner Prouty: With the Salt Lake road in business would you handle half the traffic that way?

Mr. Mortensen: Pretty close to that, I believe.

Commissioner Prouty: How does the balance of it go? It goes to El Paso and how from El Paso?

Mr. Mortensen: Well, both by the Rock Island Route from
1012 there and by the Texas Pacific, and some, of course, to the south.

Mr. Durbrow: We have the car as far as Carlin now.

Mr. Mortensen: The car may be inspected there, and if necessary would be re-iced, and he would again wire the agent at Ogden showing the time out and the number of cars, et cetera.

Mr. Durbrow: And you would repeat that operation at these different icing stations?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: So all you need to do now is to name the different icing stations where the car would be inspected or iced.

Mr. Mortensen: Ogden or Evanston, and in some few cases both; Green River, at certain seasons of the year, they are re-iced; and after that North Platte; and the next would be Council Bluffs; and that would take it into Chicago. After it arrived at Chicago if the tanks did not contain sufficient ice to protect the load for forty-eight hours, it would be iced at Chicago, provided the car is destined to that point

Mr. Durbrow: Is it usual to re-ice a car at destination?

Mr. Mortensen: Our icing stations are so arranged that most of
1013 our cars reach Chicago, and at the average destination with enough ice in the bunkers, so that it will protect it forty-eight hours.

Mr. Durbrow: Do you inspect the cars at destination?

Mr. Mortensen: Yes, sir, the car is inspected and a report is made not only to our general office, but to the office of the district in which the car originated, showing the condition of the car, the condition of the fruit on arrival, and the amount of ice in the bunkers.

Mr. Durbrow: Now, if the car is destined to some eastern destination beyond Chicago, how would that service of refrigeration be taken care of?

Mr. Mortensen: The same way, under the supervision of the Pacific Fruit Express. The car would be re-iced at Chicago and then if the car was going to New York, at two or three additional stations between there and New York.

Mr. Durbrow: Then, as I understand it, the car is inspected, the inspectors look into the bunker and see how much ice there is, at all of these icing stations through which the train passes?

Mr. Mortensen: Yes, sir, and not only that, but they also inspect
1014 the drains of all our cars to see that they are not clogged up, as they frequently are. If they are clogged up the drains have to be freed at the icing stations to see that the water from the melting ice can escape outside instead of running into the car.

Mr. Durbrow: Then of course the usual inspection of the car itself?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: Which is usual in all cases?

Mr. Mortensen: Yes.

Mr. Durbrow: Just name the icing stations a car would reach on the route via El Paso—and I suppose the same operation would be gone through at each one of these stations?

Mr. Mortensen: The same operation exactly. A car starting at Los Angeles would receive its initial icing here and will be re-iced at Colton, re-iced at Yuma, Arizona, Tucson, Arizona, El Paso, Texas; and if moving via the Rock Island, at Dalhart, Texas, and at Kansas City or Horton, and again at Silvis or some point between Kansas City and Chicago, depending upon the route.

Commissioner Lane: Would you mind indicating in your examination as to the car that goes under ventilation?

Mr. Durbrow: Yes, sir; I am glad your Honor has suggested that.

Now, Commissioner Lane would like to have you describe
1015 exactly what the Pacific Fruit Express would do if a car originated at Riverside and was destined to some destination east of Chicago, via either of these routes, and we will assume that the car has come out here and been inspected at your shops, and that it then moves forward under ventilation.

Mr. Mortensen: The car would go forward under ventilation without any special telegraph information from our agent to any other agent along the line as to the cars moving under ventilation. Our agents, however, would inspect the ventilating device of the cars, seeing that the ventilators were in proper position, see that the side doors were properly closed, and in a general way would keep their eyes on the car through each icing station or inspection station where we maintain inspection.

Commissioner Prouty: Have you inspectors at any other points than icing stations?

Mr. Mortensen: Yes, sir, we do sometimes.

Commissioner Prouty: Name those other stations?

Mr. Mortensen: I don't know that I can do that. But, for instance, we will say Evanston, and Ogden. At both of those points we maintain inspectors, but we only ice at the one
1016 point.

Commissioner Prouty: Sometimes one point and sometimes another?

Mr. Mortensen: Yes. The same applies to Carlin, Nevada, and at certain seasons of the year to Yuma, Arizona; where we maintain inspectors when we don't ice there.

Commissioner Prouty: Do you inspect at any point which is not an icing station?

Mr. Mortensen: I don't remember of any point right now, Mr. Commissioner.

Mr. Durbrow: Mr. Mortensen, when a car moves through under ventilation do you receive advice or wire as to its having passed a junction point?

Mr. Mortensen: Of course we receive telegrams advising the passing of each of the gateways, El Paso, Ogden, Portland, showing the arriving time, and the route over which it arrives, whether under ventilation or under refrigeration. That information is sent by telegram by our representative to my office here, and then we make up postal-card notice and send it to each shipper showing his particular car, showing the time it arrived at those different points, and it is necessary for it also to have that information for diversion
1017 purposes. It is necessary for us to know all the time just where the car is, or as closely as possible.

Mr. Durbrow: And a car under ventilation moves forward under the expedited service the same as a refrigerator car?

Mr. Mortensen: Yes, sir. And we are always notified, in addition to that, if anything goes wrong with the car, if the car is wrecked, or the train delayed, our office is notified so we can provide for refrigeration if necessary, or special ventilation.

Mr. Durbrow: Suppose the car moves forward under ventilation, do you have any notations upon your waybill or bill of lading made by the shipper requiring you to inspect the shipment and see that it is in good shape or anything such as that?

Mr. Mortensen: No, sir.

Mr. Durbrow: You don't pay any attention to it except you move it under schedule?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: If that shipment suffers deterioration in transit, you don't give it any inspection to determine whether that can be avoided unless——

Mr. Mortensen: —unless we are asked to do so by the ship-
1018 per, which is frequently the case. Sometimes the party to whom the car is consigned reports back to the shipper that a car, or rather its contents, is in bad order, bad condition, and the shipper asks us to have our man check up the inspection made by the inspectors of the buyer. We do that at any station in the country where we maintain our agents, and where we don't have our agents we arrange for the railroad agent to do it.

Mr. Durbrow: Do you have instructions from the shipper with reference to the manipulation of the ventilators?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: Do you invariably follow the instructions of the shipper?

Mr. Mortensen: As far as possible we do. Our men at the different stations check up the cars to see that the ventilating devices are in position as called for by the billing.

Commissioner Prouty: What do you mean by instructions from the shippers as to ventilation?

Mr. Mortensen: For instance, a car moves under ventilation in the winter season, they will send it out with what is known as
1019 special ventilation, that is, "Put in ice-plug when temperature falls below freezing. Close up car. Keep them open if temperature is above freezing." And at certain seasons of the year that involves a great deal of labor.

Commissioner Prouty: I understand that is a general rule which you observe?

Mr. Mortensen: Yes. There are some shippers bills their cars through "Keep vents open" regardless of the weather conditions.

Commissioner Prouty: But do you, in point of fact, allow the shipper to make notation of that kind upon the bill of these cars, and if the shippers make that notation do you see that the instruction is followed?

Mr. Mortensen: So far as possible, yes.

Commissioner Prouty: Just what do you mean by "so far as possible?"

Mr. Mortensen: We check it up; the cars are inspected by our men at these various stations, and the fruit is also inspected.

Commissioner Prouty: That is to say, your men at each station has a copy of the billing?

Mr. Mortensen: Yes, sir, sees it.

1020 Commissioner Prouty: And his instructions are to see that whatever the bill requires to be done is done?

Mr. Mortensen: Yes, sir.

Commissioner Prouty: So that there is a bill with instructions thereon accompanying each car?

Mr. Mortensen: Yes, sir.

Commissioner Prouty: And their instructions are to see that these instructions are carried out?

Mr. Mortensen: Yes, sir.

Mr. Call: To make that clear, I may say that there is a certain number of instructions provided for by the carriers, and they vary possibly a little between two different roads, but they are substantially the same. They have four or five or half a dozen different instructions, and a stamp is provided for each at the station, and the shipper selects which one of those he prefers which he desires to apply to that particular car. Those forms are provided by the carriers and agreed to by the shippers. And the stamp that is used depends something upon the season of the year and the fruit that is to be shipped. That stamp is affixed at the request of the shipper. The stamps are practically uniform.

1021 Commissioner Prouty: You understand, do you, Mr. Call, that the shipper may give instructions, and that the instructions given by him are carried out?

Mr. Call: Supposed to be carried out, yes.

Commissioner Prouty: Then there would be no trouble in providing with respect to one of these pre-cooled cars that the ventilators and bunkers should be kept closed.

Mr. Call: Under the new tariff that they have filed, the thirty dollar arbitrary charge, they have that stamp also.

Commissioner Prouty: That would not introduce any additional service.

Mr. Call: No, it is already being operated under that plan.

Mr. Durbrow: I would like to introduce in this connection, Railroad Refrigerator Service Association, Circular No. 27, general rules and regulations governing the handling of perishable freight. You

will find in here the privileges that are allowed the shippers. For instance, here is, Special Ventilation, Keep ventilators open to destination, keep ventilators open to a certain point, keep rear end ventilators open to destination, keep ventilators closed and plug in to destination, close ventilators and put plug in at blank station,
1022 close front ventilators, put in front plug, and so forth and so forth. I would like to introduce that in evidence. I think it will be helpful.

(The paper referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 16, received in evidence March 28, 1910, and same is attached hereto.)

Commissioner Prouty: Is that filed as a part of the tariff?

Mr. Durbrow: That is for the guidance of our employees in handling these shippers' shipments.

Commissioner Prouty: Does it apply merely to your company or all companies?

Mr. Durbrow: The Pacific Fruit Express.

Mr. Norton: It is the "Railroad Refrigerator Service Association."

Mr. Call: Used by all roads.

Commissioner Prouty: That is not something you file with the tariff?

Mr. Durbrow: No, merely the instructions to the employés.

Commissioner Prouty: Instructions given by you only?

Mr. Durbrow: No, the Salt Lake Line; all our eastern lines.

1023 Commissioner Prouty: You may introduce that circular. What we desire, Mr. Norton and Mr. Durbrow, is to know exactly the privilege which these shippers have.

Mr. Durbrow: I am coming to that now.

Commissioner Prouty: They have no official knowledge of that circular? That circular is not a part of your tariff?

Mr. Norton: Mr. Chambers tells me that as to each carrier all his provisions are in its tariff. This is a handy compendium covering all the provisions.

Commissioner Prouty: Then that circular is not supposed to add anything to the tariff as filed with the Commission?

Mr. Durbrow: No. This is only put in convenient form for our employés. And I would like to have it in evidence in order that the Commission may see what the employés have to master in order to handle this business.

Mr. Durbrow: You have described here with some degree of particularity the manner in which these shipments are carried from California points to eastern destination. You have assumed a shipment that moves through to destination without diversion or storage in transit. The tariffs, however, show that storage in transit is
1024 permitted, and one of the points at which it is permitted is here at Los Angeles. When a shipper desires to store a shipment in transit here it is brought in here to Los Angeles, is it not, placed in storage, and then moves forward as you have described in an ordinary shipment?

Commissioner Prouty: I understand that is a general rule which you observe?

Mr. Mortensen: Yes. There are some shippers bills their cars through "Keep vents open" regardless of the weather conditions.

Commissioner Prouty: But do you, in point of fact, allow the shipper to make notation of that kind upon the bill of these cars, and if the shippers make that notation do you see that the instruction is followed?

Mr. Mortensen: So far as possible, yes.

Commissioner Prouty: Just what do you mean by "so far as possible?"

Mr. Mortensen: We check it up; the cars are inspected by our men at these various stations, and the fruit is also inspected.

Commissioner Prouty: That is to say, your men at each station has a copy of the billing?

Mr. Mortensen: Yes, sir, sees it.

1020 Commissioner Prouty: And his instructions are to see that whatever the bill requires to be done is done?

Mr. Mortensen: Yes, sir.

Commissioner Prouty: So that there is a bill with instructions thereon accompanying each car?

Mr. Mortensen: Yes, sir.

Commissioner Prouty: And their instructions are to see that these instructions are carried out?

Mr. Mortensen: Yes, sir.

Mr. Call: To make that clear, I may say that there is a certain number of instructions provided for by the carriers, and they vary possibly a little between two different roads, but they are substantially the same. They have four or five or half a dozen different instructions, and a stamp is provided for each at the station, and the shipper selects which one of those he prefers which he desires to apply to that particular car. Those forms are provided by the carriers and agreed to by the shippers. And the stamp that is used depends something upon the season of the year and the fruit that is to be shipped. That stamp is affixed at the request of the shipper. The stamps are practically uniform.

1021 Commissioner Prouty: You understand, do you, Mr. Call, that the shipper may give instructions, and that the instructions given by him are carried out?

Mr. Call: Supposed to be carried out, yes.

Commissioner Prouty: Then there would be no trouble in providing with respect to one of these pre-cooled cars that the ventilators and bunkers should be kept closed.

Mr. Call: Under the new tariff that they have filed, the thirty dollar arbitrary charge, they have that stamp also.

Commissioner Prouty: That would not introduce any additional service.

Mr. Call: No, it is already being operated under that plan.

Mr. Durbrow: I would like to introduce in this connection, Railroad Refrigerator Service Association, Circular No. 27, general rules and regulations governing the handling of perishable freight. You

will find in here the privileges that are allowed the shippers. For instance, here is, Special Ventilation, Keep ventilators open to destination, keep ventilators open to a certain point, keep rear end ventilators open to destination, keep ventilators closed and plug in to destination, close ventilators and put plug in at blank station,
1022 close front ventilators, put in front plug, and so forth and so forth. I would like to introduce that in evidence. I think it will be helpful.

(The paper referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 16, received in evidence March 28, 1910, and same is attached hereto.)

Commissioner Prouty: Is that filed as a part of the tariff?

Mr. Durbrow: That is for the guidance of our employees in handling these shippers' shipments.

Commissioner Prouty: Does it apply merely to your company or all companies?

Mr. Durbrow: The Pacific Fruit Express.

Mr. Norton: It is the "Railroad Refrigerator Service Association."

Mr. Call: Used by all roads.

Commissioner Prouty: That is not something you file with the tariff?

Mr. Durbrow: No, merely the instructions to the employés.

Commissioner Prouty: Instructions given by you only?

Mr. Durbrow: No, the Salt Lake Line; all our eastern lines.

1023 Commissioner Prouty: You may introduce that circular. What we desire, Mr. Norton and Mr. Durbrow, is to know exactly the privilege which these shippers have.

Mr. Durbrow: I am coming to that now.

Commissioner Prouty: They have no official knowledge of that circular? That circular is not a part of your tariff?

Mr. Norton: Mr. Chambers tells me that as to each carrier all his provisions are in its tariff. This is a handy compendium covering all the provisions.

Commissioner Prouty: Then that circular is not supposed to add anything to the tariff as filed with the Commission?

Mr. Durbrow: No. This is only put in convenient form for our employés. And I would like to have it in evidence in order that the Commission may see what the employés have to master in order to handle this business.

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1024 permitted, and one of the points at which it is permitted is here at Los Angeles. When a shipper desires to store a shipment in transit here it is brought in here to Los Angeles, is it not, placed in storage, and then moves forward as you have described in an ordinary shipment?

Mr. Mortensen: Yes, sir. It might be moved by a different route. For instance, a car may be brought in here from Riverside, and put in the cold storage plant here, and held there for a certain number of days, or as long as the shipper requires, and then re-loaded into a car of the same capacity. You understand that they can only—it must be loaded in a car—or a car can only be loaded with the same number of boxes as it originally had. For instance, if it starts out with 384 boxes, it has to go out of the storage room with that number of boxes.

Commissioner Prouty: How long since this privilege has been allowed?

Mr. Mortensen: I believe about three years, or two and a half.

Commissioner Prouty: That is intended to permit pre-cooling at Los Angeles, or what?

Mr. Mortensen: Well, primarily I believe it was put in
1025 for the assistance of Mr. Powell in his experiments here with pre-cooling and storing fruit, and has never been taken out.

Commissioner Prouty: As a matter of fact, there is not much storing and shipping out except for the purpose of refrigeration?

Mr. Mortensen: No. There is some stored and held here for better market conditions. That is the primary reason for storing it, not pre-cooling. Not to my knowledge have they ever brought it in simply to pre-cool it, but rather to hold it for better market conditions.

Mr. Durbrow: This storage in transit privilege is accorded shippers and the through rate is protected from the point of origin right through here?

Mr. Mortensen: Yes.

Commissioner Prouty: Is this storage in transit actually practiced anywhere except in Los Angeles?

Mr. Mortensen: Pasadena also.

Mr. Durbrow: Riverside and Pasadena. The tariffs permit——

Commissioner Prouty: The fruit is taken out of the car and kept for a certain length of time and packed into another car and sent out——

1026 Mr. Durbrow: They may hold it in the car, if they wish. I was going to add that so far as Los Angeles and Pasadena and Riverside are concerned the fruit is taken from the car and put into the cold storage plant and allowed to remain there as long as the shipper may desire and then is taken out and moves forward to its ultimate destination.

Commissioner Prouty: When they store a car they do it under the diversion privilege?

Mr. Durbrow: Yes, I was just coming to that point.

Commissioner Prouty: You say that in addition to that they have the privilege of storing in transit?

Mr. Mortensen: Yes, sir.

Commissioner Prouty: And they bring fruit in from these different points, and take it out of the car, and perhaps send a carload out at different times, without sending forward the same identical car, but different grades?

Mr. Mortensen: Different grades.

Mr. Durbrow: The same fruit is supposed to go forward to the ultimate destination.

Commissioner Prouty: There is no commercial reason for assembling the fruit to make up different grades?

1027 Mr. Durbrow: Not as I understand it.

Commissioner Prouty: The reason I ask is because in Florida they do that. They bring the fruit up to Jacksonville, assemble it, and send forward cars made up of different grades, part pineapples, part oranges, part grapefruit. But here in California you do nothing of that kind.

Mr. Durbrow: I understand that the tariff permits mixed carloads of different fruits. Grapefruit, oranges and lemons may be mixed in the same car.

Mr. Durbrow: Mr. Mortensen, in connection with this diversion proposition I want to ask you if the tariff provides that so much dunnage may be loaded in the car?

Mr. Mortensen: I am not thoroughly familiar with that, but I believe that 200 pounds is allowed.

Commissioner Prouty: Of what?

Mr. Durbrow: Dunnage. Stripping, whatever it may be, to load the oranges into the car, and no extra charge is made for that?

Mr. Mortensen: Certainly not.

Commissioner Prouty: You determine the weight of the car by the estimated weight of the boxes?

1028 Mr. Mortensen: Yes, sir.

Commissioner Prouty: And count the boxes in the car?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: Now, Mr. Mortensen, when a shipment leaves California destined to some eastern point the shipper is accorded the privilege of diverting that shipment, is he not?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: How many times may the shipper divert a shipment after it leaves California?

Mr. Mortensen: As many times as he desires, so long as he keeps it going in the same general direction, without any back haul.

Mr. Durbrow: When a shipper sen-s a car, for instance, to Kansas City, he has the privilege of diverting that car as many times as he wishes, so long as the diversion is in the same general directions?

Mr. Mortensen: Yes.

Mr. Durbrow: Now, I want to ask you how that diversion is accomplished. What is done by the Pacific Fruit Express to accomplish that diversion under the shipper's orders or instructions?

Mr. Mortensen: Well, take for instance a great many

1029 cars are billed to gateway points, like El Paso or Ogden.

Mr. Durbrow: You call those tramp cars?

Mr. Mortensen: Yes. We know that is not the final destination of the car, because El Paso could not consume one thousandth part of the cars that are billed to that point. After the car has been

out a day or two the shipper will file a diversion asking to have the car diverted to Kansas City, we will say. That diversion is filed in my office in Los Angeles, providing the shipper is at Los Angeles. If a shipper at Redlands desires to file a diversion he may file it either direct with us over the telephone, or with the railroad agent, who immediately transmits it to my office by telegraph, or telephone. My office then looks up the car and determines from the records where the car is, and then wires ahead to catch the car at the first point possible and make the change in routing or change in consignee, as the case may be.

Mr. Durbrow: You have prepared a statement showing the number of diversions made on citrus fruit for the year 1908 and 1909?

Mr. Mortensen: Yes, sir. From northern California,
1030 citrus business, northern California we handled 2229 diversions. Southern California, 8646 diversions. 4946 of that total were diverted once, 1259 were diverted twice, 286 were diverted three times, 63 were diverted four times, 16 diverted five times, 2 diverted six times. This was for the season of 1908 and 1909.

Mr. Durbrow: What is the greatest number of diversions you have ever known in any one shipment?

Mr. Mortensen: I think we had a shipment about two years ago from the Porterville district that we counted up at the time and we had 16 diversions. There might not have been 16 changes of destination, but we had 16 requests for change in the billing by the shipper. The car finally went to Boston, having been sixty or seventy days en route, and was in very bad shape when it got there, and I believe the railroad had to sell the car.

Mr. Norton: While you are on the subject of diversions, I would like to bring out this point. Is it a fact that as long as the car remains unopen, the shipments remains unbroken, the consignor or consignee has a right of diversion without limit?

Mr. Motensen: Yes, sir, I believe so.

1031 Mr. Durbrow: And even after the car has been held at a point until demurrage has accrued, and demurrage may have been paid for a week or ten days or even longer, it may still be diverted, can it not?

Mr. Mortensen: Yes, sir. We have held cars at Chicago as long as thirty days and then diverted.

Mr. Durbrow: I would like to ask you if you can tell us about the number of days' delay that are occasioned, the average number of days' delay that are caused by reason of the diversion of cars?

Mr. Mortensen: I cannot segregate that, Mr. Durbrow, but the average detention to a car at diversion point and destination point under load is five days.

Commissioner Prouty: How much demurrage is paid on the average?

Mr. Mortensen: Very seldom any.

Commissioner Prouty: Do you really allow five days without demurrage?

Mr. Mortensen: That is the average time that the total citrus

fruit business is held in the cars through diversion and detention at destination point.

Commissioner Prouty: You allow forty-eight hours to
1032 unload?

Mr. Mortensen: Yes, sir.

Commissioner Prouty: So that had the car gone to record destination demurrage would have accrued for three of those days?

Mr. Mortensen: Yes, sir.

Commissioner Prouty: But in point of fact you say they can have five days' free time without practically any amount of demurrage?

Mr. Mortensen: I would not say that——

Mr. Durbrow: Mr. Mortensen, a car may go into El Paso, for instance, one of these tramp cars, and it may remain there just under the forty-eight hours and then go forward, and then of course there is no demurrage on the car? That may be the case in any one of these diversions?

Mr. Mortensen: It may be repeated. If there is any demurrage accrued it is very small, one *one* dollar a day.

Mr. Durbrow: Has it been your experience that the shippers *do* move their cars from point to point, exercise pretty good care that they get them out before the demurrage begins to run?

Mr. Mortensen: No, I don't suppose I could say that.
1033 The amount is so small that I don't think the shipper would object to paying a dollar a day to hold his car for a better market.

Mr. Durbrow: When a car is held for diversion at the particular point what service is discharged by the Pacific Fruit Express with regard to caring for the car at that point? I understand that a car may be held as long as the shipper may desire at any particular point, so long as the seals are not broken. What service is rendered by the Pacific Fruit Express at that point?

Mr. Mortensen: If the car is under ventilation the only particular service is that our man keeps reporting the car as being on hand and asks for disposition, and he watches it to see that the ventilators and doors are in the position called for by the billing. The car usually has to be vented through the side door every twenty-four hours if it is under ventilation, and he sees that that is done.

Mr. Durbrow: Then they do break the seals?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: So it is not a question of whether the seals are broken, but whether the load is removed from the car?

Mr. Mortensen: Yes.

1034 Mr. Durbrow: So long as the load is not disturbed he may continue to have that car diverted?

Mr. Mortensen: They even disturb the load. They take their prospective buyers, and show them the car, and sometimes the car will be pretty will pulled to pieces and then fixed in shape again and still it can go forward.

Mr. Norton: Do they sometimes leave a car under demurrage

charges for the purpose of getting another load of ice put into it if they are holding it for the market?

Mr. Mortensen: If the car is at destination with sufficient ice in the tanks to hold it forty-eight hours, if there is any further ice required at that point the shipper has to pay for it, unless the car is finally diverted from that point to a point taking a higher rate. If only one icing has been performed at the initial diversion point there would be no extra charge.

Mr. Norton: Do the shippers, as a matter of fact, ever use the cars for storage purposes?

Mr. Mortensen: They most certainly do, yes, sir.

Mr. Durbrow: Mr. Mortensen, when the car is held for diversion at these particular points, while the shipper is trying to dispose of that car in some particular market the Pacific Fruit Ex-
1035 press, when it is under refrigeration, has to keep icing the car, do they not?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: And to ice that car it is necessary to switch the car from the team-track to the ice-track and back again whenever it is necessary to ice it?

Mr. Mortensen: Yes, sir. And no additional charge is made for that. For instance, at El Paso, where a large percentage of these cars are held. A car under refrigeration is first sent to the icing plant, which is two and a half miles from the main yard, and it is iced and taken over there. As the car is billed to El Paso, we have to take it over to El Paso, and every twenty-four hours that that car is held there, be it one day or 30, the car is taken back to the ice-house and re-iced, and the cost of such re-icing is added to the billing, with the exception of the last icing.

Mr. Durbrow: To accomplish these diversions you employ the telegraph service. I want to ask you if you can tell me about the number of telegrams that it is necessary to send in order to accomplish these diversions.

Mr. Mortensen: I have a statement made up here showing that information. I was asked to furnish that information some
1036 little time ago, and in order to get a reasonable idea of it, I instructed our diversion man to take each hundredth diversion handled. We handle something like 8400. He selected every hundredth diversion, irrespective of where the point of destination was, and so forth. We then figured the cost of those diversions based upon Western Union tolls, and the average was $4.36 to accomplish each diversion.

Mr. Durbrow: I would like to introduce this statement in evidence.

(The statement above referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 17, received in evidence March 28, 1910, and same is attached hereto.)

Commissioner Lane: Do you pay the Western Union tolls?

Mr. Mortensen: No, sir, we don't except the wires that it is necessary to send by Western Union, we pay the Western Union tolls.

Commissioner Lane: You use the railroad frank?

Mr. Mortensen: Yes.

Mr. Durbrow: Do you sometimes used the Western Union in order to get quicker service?

Mr. Mortensen: Very frequently it is necessary.

1037 Mr. Durbrow: They are not actually paid for in so many dollars and cents by the railroad company, but under our contract with the Western Union, which we would be glad to have introduced in evidence if your Honors deem it necessary, we in the balancing of considerations, agree to do certain things for them, permit them to use our right of way, one thing and another, and we carry their men over our road, from point to point, *and we carry their men over our road, from point to point,* and we carry their materials for the maintenance of the joint lines, and in consideration of that they permit us to telegraph over their lines, use their lines to a certain extent, measured by the number of words. And we exceed that every year, so far as the Southern Pacific is concerned, and pay them actually in cash for the service. So while this does not represent the actual outlay, it does represent something, in the balancing of these considerations, and is an expense that the shippers would have to maintain if they performed this service for themselves.

Commissioner Prouty: The Santa Fe man testified that it would involve the actual outlay of no money on their part, but you say this actually involves an outlay of money on your part.

1038 Mr. Durbrow: Yes, so far as the Western Union is concerned. As I say, it involves actual outlay, for the reason that the sum total of the telegraphing by the Southern Pacific at the end of the year—we have to account to the Western Union for the excess over the amount of telegraphing that we are allowed to transmit free over their lines.

Commissioner Prouty: You say that the fruit express is kept entirely distinct from the Southern Pacific Company. Does the fruit express actually pay the Southern Pacific anything for the telegraph privilege?

Mr. Durbrow: No, they do not. It is considered——

Commissioner Prouty: So that the Fruit Express Company pays out actually no money on account of this service?

Mr. Durbrow: No, but the Southern Pacific does, and it is the Southern Pacific Company that is responsible to the shippers. I explained to your Honor that that is the instrumentality through which we operate.

Commissioner Prouty: Can you say how much money you pay out on account of that service?

Mr. Durbrow: No. It is all in the same basket with the Southern Pacific.

1039 Mr. Norton: The Commissioner misunderstands the Santa Fe's position in that regard. I think I stated that as to our own wires we pay nothing, but as to Western Union we have to pay something under our contract. We have a contract similar to that outlined by Mr. Durbrow, and by the end of every year we have a pretty big cash balance to pay to the Western Union. We are allowed certain telegraph tolls and after a certain number of words—

I don't remember how many—we have to pay a certain rate. Of course we can't segregate from what part of this citrus business is chargeable to it. Our purpose in using these figures was simply to illustrate the commercial value of these messages if they had to do it themselves.

Commissioner Prouty: Well, of course, if they had to move the citrus fruit across the continent by wagon it would cost them still more. We are interested in getting at what it costs you. We are interested in knowing the value of the service. The cost of it. I asked you whether it involved the outlay of any money by your Company, and I understood you to say it did not. You say now it does.

Mr. Norton: No, I don't say that. I say that under the large cash balance which we pay to the Western Union some of
1040 this diversion business comes, but we can't estimate it.

Commissioner Lane: How much is your balance?

Mr. Norton: It is considerable. We get every now and then a caution from our operating officials to be careful about using Western Union wires.

Commissioner Lane: We found two or three years ago that generally the railroads do not pay anything at all in cash.

Commissioner Prouty: You transport their supplies and their men?

Mr. Norton: Yes.

Commissioner Prouty: As a general rule don't they pay you rather than you pay them?

Mr. Durbrow: The Southern Pacific pays them.

Mr. Norton: I am quite positive we pay a cash balance to the Western Union.

Mr. Halsted: I want to state that so far as the Salt Lake is concerned, I am advised that we have the same kind of a contract as the Western Union, under which, after a certain number of words is exceeded we pay a toll. I am advised further that Mr. Mortensen's telegrams over the Western Union for a period of three
1041 months on diversion matter, exceeded the use of the franks by all the other officers of the company in the Western Union service.

Mr. Mortensen: I may say that our office is cautioned every fifteen or thirty days regularly about the use of Western Union wires. I use them more freely than the officers of our company think I should, but the demand on us for expedited service I think justifies us in doing it.

Mr. J. H. Call: In order to make this matter more clear, these initial lines are most of them land-grant railroads, and these telegraph lines were built as a part of the railroad, required to be so built, as a part of the railroad system, and operated for the public. Instead of that they lease these telegraph lines which were a part of the railroad, to be operated by them, they lease those lines to the Western Union Telegraph Company, turn them over and divert from their railroad earnings the earnings of the telegraph lines which otherwise would be part of the railroad earnings and would prop-

only show under their returns; now they are trying to charge back, and count the thing double. They have diverted the earnings of the railroad, and then attempt to offset what they have not paid for telegrams.

1042 Mr. Durbrow: Mr. Mortensen, outside of the cost of the telegrams for accomplishing these diversions, do you employ men to care for those diversions?

Mr. Mortensen: I have three clerks in my office now whose whole duty is to handle the diversion business.

Mr. Durbrow: Besides these men that you have in your office what other employees of the company are employed along the line with reference to these diversions?

Mr. Mortensen: For instance at El Paso, I have been able, up to the time we took up the diversion business, most of the year, to handle business there with one agent. Since we have been handling the diversion business we have two. That applies generally all over the country. The Chicago office, I should say employs two or three men that do nothing but attend to the diversion business.

Mr. Durbrow: Outside of accomplishing these diversions by wire, do you notify the shipper also as to the time the cars move by the different gateways? When they pass the gateways do you obtain advice for the shippers with reference to the movement of their shipments?

1043 Mr. Mortensen: Yes, sir, we obtain regular information as I explained a short time ago, from Ogden and El Paso and Portland, showing the arriving time of all cars of perishable freight from this district, and that information is transmitted to the shippers just as promptly as possible. In addition to that in handling these diversions it is not only necessary to instruct the agent of the railroad, but we also have to see that the man notifies us that this diversion has been accomplished, so that we may in turn notify the shipper that his request has been accomplished. Some of our eastern connections are slow coming back with diversion notices.

Mr. Durbrow: And in addition to that, notifying them of the diversions, I would like to ask you if you also keep the shippers advised with reference to the movement of their cars, where they may be found on particular days?

Mr. Mortensen: We do on their request at any time.

Mr. Durbrow: And you do that for all shippers alike?

Mr. Mortensen: Yes, if they want to know where their car is, as they frequently do, or what time it is due at a certain point, we don't hesitate at any time to telegraph and find out where it is.

1044 Mr. Durbrow: In describing the movement of a car from Chicago to Riverside, you passed over very hurriedly the question of pre-cooling at Colton. I wish to ask you one or two questions about that. In the first place who has been instrumental in bringing about this pre-cooling proposition? By whom were the experiments made?

Mr. Mortensen: The principal experiments, so far as I know, were made by the Pacific Fruit Express Company and by the Santa Fe.

Mr. Durbrow: How much has the Pacific Fruit Express expended by way of experiment?

Mr. Mortensen: A little over $75,000. That is, you understand, that is before we decided to build these plants at Roseville and Colton.

Mr. Durbrow: After you had conducted these experiments which cost you $75,000, you erected two pre-cooling plants, one at Roseville and one at Colton, at a cost of $150,000?

Mr. Mortensen: They have cost that so far, and they are not yet completed?

Commissioner Prouty: What do you mean by pre-cooling plant?

Mr. Mortensen: That part of the plant for instance, at Colton, that is used exclusively for pre-cooling.

Commissioner Prouty: That does not include your icing plant?

Mr. Mortensen: No, sir. Nor the power that we use in making the refrigeration.

1045 Mr. Durbrow: I want to ask you, Mr. Mortensen, if you will please state what you expected to accomplish, what result you expected to accomplish by adopting this pre-cooling system.

Mr. Mortensen: Only two things. One of these things we know that we can accomplish. The other is experimental. We know that we can bring the car under refrigeration from 48 to 60 hours sooner by pre-cooling than we can under ordinary refrigeration. The thing we do not know is, just how much advantage it is for the fruit to pre-cool it under our system. That we are experimenting with. It is claimed for the system that it is of great value to the fruit in doing away with decay germs, and putting the fruit in a better keeping condition after it arrives at destination.

Commissioner Prouty: How could that be, when you don't make the fruit any colder? The atmosphere in the car is the same whether you refrigerate it through the bunkers or pre-cool it.

Mr. Mortensen: It is not a question of the cold, or the cold units we put into it, but it is a question of what we take out, whether we can really take out decay germs by our vacuum system or not.

1046 Commissioner Prouty: You mean extract the germs?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: I want you to describe in a very general way, so as to have it in the record, as Mr. Commissioner Prouty was out at the plant yesterday, exactly what the system is of pre-cooling cars. Very generally what the theory or scope is of the pre-cooling plan.

Mr. Mortensen: Simply air circulation system as between a very large bunker-room, which is filled with ammonia pipes, between that and the car. We change the circulation when we first start to pre-cool—when the cars are first coupled up a vacuum is created in the car by blowing the air taken out into the atmosphere. It is claimed that that action is beneficial to the fruit in the way of keeping it in better keeping condition. We use that vacuum process for the first half or three-quarters of an hour, and after that it is simply a straight circulation system between the bunker-room and the car, enforced circulation. We put between seven and eight thousand cubic feet of air per minute through each car, and that air is usually started up at about from eight to twelve above zero, and when we

are through it is raised to about twenty-five or twenty-eight, and the temperature of the fruit has been reduced in the neighborhood of from 42 to 45 degrees.

1047 Mr. Call: Is it your idea that the shippers should be required to take that treatment whether they wish to or not?

Mr. Mortensen: That is something that has not been determined yet. We are pre-cooling all cars that move under refrigeration now.

Mr. Call: That is not at their responsibility. The risk is upon you. Do you assume that?

Mr. Mortensen: We assume that——

Mr. Durbrow: Under the law, whether we want to or not.

Mr. Mortensen: I might say that we froze a few cars of celery out there when we started, and we expect to pay for it. And if we freeze any oranges I expect we will have to pay for them.

Mr. Durbrow: I would like to ask you in a general way, after this cold air has been circulated through the car until it is brought to the temperature desired, you then ice the car and it goes on to destination?

Mr. Mortensen: While we are pre-cooling the car the ice is gotten ready, and immediately the pre-cooling is stopped we fill the bunkers with ice, which ice will hold the temperature at about the tem-

1048 perature that it has been brought to by the pre-cooling—you understand there is additional re-icing en route.

Mr. Durbrow: Yes, I am assuming that. But as I understand it, you take the temperature down in the car to such a degree that it can be maintained to its destination by reason of the refrigerating power of the ice itself?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: I would like to ask you how long it takes you to refrigerate a car six tiers wide and two tiers high, the usual forty foot car of the Pacific Fruit Express.

Mr. Mortensen: An hour and a half to two hours and a half, depending upon the temperature of the fruit when it reaches the pre-cooling plant.

Mr. Durbrow: What is the temperature of the oranges when you cease pre-cooling?

Mr. Mortensen: 42 to 45. That temperature is taken by inserting a thermometer in the inside of the box, usually inside of an orange.

Mr. Durbrow: Why do you select that particular temperature?

Mr. Mortensen: Because that is the temperature at which the ice will hold the car. I conducted some experiments some

1049 time ago with cars under straight refrigeration which demonstrated the fact that I could take a carload of oranges and ice them and keep them re-iced, and in forty-eight to sixty hours, varying with the outside temperature, we would have the temperature of the fruit down to 42 to 45 degrees.

Mr. Durbrow: You pre-cool the car there as well as you do the fruit?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: What is the advantage in pre-cooling the car as well as the fruit, Mr. Mortensen?

Mr. Mortensen: Well, a great advantage. If the car was hot and the fruit cold, naturally the fruit would take up some of the heat of the car, and the car would take up some of the cold of the fruit. By pre-cooling the fruit and the car at the same time we can maintain the temperature with better success.

Mr. Durbrow: What capacity have you there at the plant so far as refrigeration tons are concerned?

Mr. Mortensen: Our plant is known as a 500 ton refrigeration plant. In other words, it is large enough to manufacture 250 tons of ice each twenty-four hours.

Mr. Durbrow: I would like to ask you how many cars you
1050 pre-cool at a time?

Mr. Mortensen: 20 cars.

Mr. Durbrow: You are doubling the capacity of your plant, as I understand it?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: When will those conditions be completed in order that you may use the plant to full capacity?

Mr. Mortensen: It could have been completed by now, but owing to the fact that the Salt Lake washed out we have not hurried it. It will be completed, however, in sixty days.

Mr. Durbrow: I would like to ask you if you will state why the Pacific Fruit Express went to the expense of $150,000 to provide a pre-cooling plant at Colton?

Mr. Mortensen: Well, there has been a good deal of agitation, a good deal of talk, in favor of pre-cooling, for a long time. Experiments were conducted by Mr. Powell showing that pre-cooling was of advantage to the fruit in bringing it under refrigeration sooner. Our experiments with the small plant also demonstrated that fact. In our experiment with our small plant, however, we considered that we did not save enough ice en route to pay for the pre-cooling,
but with the large plant we found that, so far as we are able
1051 to determine now, that the saving in ice en route practically off-set the cost of the pre-cooling.

Commissioner Prouty: How do you save more ice en route with the big plant than with the small plant?

Mr. Mortensen: Because we were not able to bring the temperature down——

Commissioner Prouty: That is, the small plant would not reduce the car to forty-five degrees?

Mr. Mortensen: Yes, but in a small plant we had to hold the car so much longer.

Commissioner Prouty: So far as using ice after the car leaves the station it makes no difference whether it is pre-cooled with a big plant or a small plant, does it?

Mr. Mortensen: No, if the temperature is the same.

Mr. Durbrow: Not if the temperature of the fruit and the car itself is the same?

Mr. Mortensen: Yes.

Mr. Durbrow: But it would require more ice if the car was hot when the fruit was put into it?

Mr. Mortensen: Naturally would, yes, sir.

Mr. Durbrow: After you had made these experiments, and before you constructed those plants, did you obtain advice from
1052 the shippers as to whether they wished you to construct this plant or wished to do their own pre-cooling?

Mr. Mortensen: Yes, sir. There was a great deal of discussion over a year ago as to whether or not the carrier should do the pre-cooling or the shipper. I know that our people in company with the railroad officials visited the shipping district, and then later had a meeting as between the Santa Fe Railroad and the Salt Lake and the Southern Pacific and the citrus fruit shippers which was called, I think by the Citrus Protective League.

Mr. Durbrow: On January 13, 1909?

Mr. Mortensen: Yes, sir, I think so. At that meeting the matter was very fully discussed, and the railroads generally were requested or were notified that the shipper would expect them to do the pre-cooling; it was a problem for them to solve, and not the shipper.

Mr. Durbrow: Why did the shippers desire the railroad company to provide these facilities?

Mr. Mortensen: I believe the general opinion was that the expense involved in connection with establishing pre-cooling plants at each packing-house would be so great in total that it would be impracticable, and if some shippers had the advantage of
1053 pre-cooling other shippers would be unable to have it.

Mr. Durbrow: That was the principal reason for wishing the carriers to construct a plant?

Mr. Mortensen: Yes.

Mr. Durbrow: I would like to ask you as to the comparative cost of moving a car to destination under straight refrigeration or when it had been pre-cooled and then refrigerated. What has been your experience in that line?

Mr. Mortensen: Well, our experience so far has been that there is not a very great saving in ice Therefore there is not very much difference in the cost.

Mr. Durbrow: You are not charging any more when you pre-cool shipments as well as ice them?

Mr. Mortensen: No, sir. That is the fact.

Mr. Durbrow: Then the fact remains, Mr. Mortensen, that the only purpose that you accomplish by this pre-cooling is to bring the fruit to refrigeration at an earlier time?

Mr. Mortensen: In other words, to benefit the fruit.

Mr. Call: You don't insist upon it, then?

Mr. Mortensen: I don't know.

Mr. Durbrow: If the shipper should prefer not to have it
1054 done?

Mr. Mortensen: We might do it anyway. I don't know about that.

Mr. Durbrow: Mr. Mortensen, some of the gentlemen who appeared for the complainants testified that they reduced the tempera-

ture of their cars to about thirty-three degrees. Now, I understand that ice melts at thirty-three degrees, and that ice freezes at thirty-two, or rather water freezes at thirty-two, and becomes ice. Why is it that you do not in pre-cooling these cars reduce the temperature to thirty-three?

Mr. Mortensen: Well, we can do that very well, but the reason that we don't do it is that by filling the tanks with ice we cannot maintain a lower temperature than that ice would eventually bring it to itself, which is in the neighborhood of forty-two to forty-five degrees. And there is no benefit in bringing the fruit down to thirty-three for two or three days and then having it go up to forty-two.

Mr. Durbrow: I want to ask you this. Is it a fact that when fruit has been brought to a temperature of thirty-three degrees and permitted to rise again, to a temperature of say forty-four or
1055 forty-five degrees, does that cause a deterioration in the fruit itself?

Mr. Mortensen: I don't believe it would make very much difference, although it would not benefit the fruit any.

Mr. Durbrow: You would not accomplish any good results by doing that, though?

Mr. Mortensen: No, and it might cause the fruit to deteriorate more rapidly after it had been taken out from a temperature of forty-two.

Mr. Durbrow: I want to ask you this. Suppose fruit had been brought down to a temperature of thirty-three degrees, and had had an initial icing, and was permitted to move forward to destination without further ice. Of course particularly at some seasons of the year the temperature would constantly rise in that car. I want to ask you if the temperature rising after the fruit had been brought to refrigeration would effect that fruit in any way?

Mr. Mortensen: I believe it does, yes, sir. I think the best evidence of that is that in cars under refrigeration, no matter whether they have been refrigerated for three or four or five or six days, it has been the custom of the claim agents of the shippers to claim to the railroad that if the tanks of the cars are allowed at any
1056 point en route to become less than one-half full, and there is any considerable amount of loss, the shippers claim they have a basis for a claim, and I think the carriers as a rule accept that as a basis for a claim.

Mr. Durbrow: I understand you to say that when shipments have moved from California, either pre-cooled or under refrigeration, with instructions to have the shipment re-iced en route as many times as necessary, that these complainants here have preferred claims against the carriers if those bunkers were not right full on arrival at destination.

Mr. Mortensen: If the bunkers become less than one-half full at any point en route they invariably have presented claims if the fruit has shown any decay. I may say in this connection that I have seen a great many claims made on that basis where the whole decay was not over three to five per cent on arrival at destination.

Mr. Durbrow: If a shipment was pre-cooled and re-iced and moved

forward to destination without further icing the bunkers would become less than half full, wouldn't they?

Mr. Mortensen: They certainly would.

Mr. Durbrow: Mr. Mortensen, you have prepared a statement showing the record of the icing of Pacific Fruit Express cars which were pre-cooled and pre-iced by shippers, and this statement
1057 shows the amount of ice that was put into these cars by the carriers en route.

Commissioner Prouty: Where were these shipments pre-cooled?

Mr. Mortensen: Pomona.

Commissioner Prouty: All your shipments are—pre-cooled shipments are from Pomona, are they?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: Pre-cooled by the shipper himself?

Commissioner Prouty: Yes.

Mr. Durbrow: Yes.

Commissioner Prouty: How many of those shipments are there?

Mr. Mortensen: I think there are twenty-seven one year and thirty another, something of that kind.

Commissioner Prouty: You mean twenty-seven in the year 1907-8, and thirty in the year 1908-9?

Mr. Durbrow: Yes. And you will understand these shipments moved prior to the time that the tariff provision was made providing for this $30.00 charge.

Commissioner Prouty: Does the tariff now provide for a pre-cooling rate?

1058 Mr. Durbrow: By the shipper himself, to pre-cool and pre-ice $30.00.

Commissioner Prouty: Yes. When the shipper pre-cools and pre-ices his own car you charge him $30.00?

Mr. Durbrow: Yes.

Commissioner Prouty: When did that tariff become effective?

Mr. Durbrow: July 5, 1909.

Commissioner Prouty: And the cars to which you now refer were all previous to that time?

Mr. Durbrow: Yes.

Commissioner Prouty: Have you any record there showing the cars which were pre-cooled and moved subsequent to the date upon which the charge of $30.00 was established?

Mr. Butler: The shippers have put a statement in making claim for those cars and we are paying them, generally.

Commissioner Prouty: I understand you, Mr. Mortensen, after this tariff became effective you did not re-ice cars that were pre-cooled and sent through?

Mr. Mortensen: We tried not to, but there were quite a number that were re-iced through error on the part of our agents, they having general instructions, not only our agents but the railroad men, to put all cars under ice to the ice houses, and under those
1059 circumstances there were quite a number pre-iced.

Commissioner Prouty: Can you state how many of the pre-cooled cars were actually re-iced after July 5, 1909?

Mr. Mortensen: I don't believe I can state accurately. Something like ten or fifteen of them. I have the record.

Mr. Durbrow: I would like to get those records.

Commissioner Prouty: I think you should do that, if you can, to show how many of these cars which were sent out after July 5th on instructions not to re-ice en route, because the shipper claims that those cars went through in a satisfactory manner, and it is important to know whether or not they were re-iced or not.

Mr. Durbrow: We can obtain that data, and we would be glad to do it.

Mr. Call: We would like to know just which ones.

Mr. Durbrow: Certainly, we can show the exact cars.

Commissioner Prouty: Where are those figures?

Mr. Mortensen: In my office and the Chicago office.

Commissioner Prouty: Can you obtain them today?

Mr. Mortensen: I have already wired for a portion of it, and I can't say just when I can get it. It is possible I may have it
1060 all today.

Mr. Durbrow: This statement that you have prepared of the shipments that were pre-cooled and pre-iced at Mr. Dreer's plant prior to June 5, 1909, shows the number of cars and the quantity of ice, and the condition of the tanks on the different days at the points where ice was placed in the cars?

Mr. Mortensen: Yes.

Mr. Durbrow: Showing from 14,160 to 28,800 pounds of ice?

Mr. Mortensen: You understand that is an addition to the initial icing which was furnished by the shipper.

Mr. Durbrow: I would like to have this statement introduced in evidence and marked in its regular order.

(The statement above referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 18, received in evidence March 28, 1910, and same is attached hereto.)

Commissioner Prouty: What is your source of information?

Mr. Mortensen: From our reports furnished by our agents at all the icing stations en route.

Commissioner Prouty: What is the nature of the reports?

Mr. Mortensen: Reports showing car numbers, arriving time, position of ventilators, position of plugs, condition of drains,
1061 and the amount of ice in tanks of car and the amount supplied.

Commissioner Prouty: That report is made with respect to each car at each icing station?

Mr. Mortensen: Yes, sir.

Commissioner Prouty: Have you the original reports in the case of these cars?

Mr. Mortensen: Yes, covering that territory west of the gateway. The Chicago office has them for the territory east.

Commissioner Prouty: You have everything up to——

Mr. Mortensen: Up to and including El Paso, Ogden, and Portland.

Commissioner Prouty: I think you had better furnish them; have those original reports gotten together and filed.

Mr. Durbrow: Mr. Mortensen, you spoke of some cars that moved after July 5, 1909, which had been pre-iced and pre-cooled by the shippers themselves which were shipped via your car line with instructions not to re-ice. How is it that those cars came to be iced?

Commissioner Prouty: He has already stated that.

Mr. Durbrow: Yes, but I think I should bring out the
1062 difficulties that we encounter when we find this third kind of car in our train.

Commissioner Prouty: I have already asked him a good many questions to see whether there is any special difficulty. The witness testified that instructions went with each car; the inspector had the billing in the case of each car, and that there was no reason why, without any additional effort on his part, he could not observe the instructions and keep the bunkers closed. Do you propose to show that it does entail some additional labor?

Mr. Durbrow: That was with reference to the old cars.

Commissioner Prouty: No, it was with reference to exactly this kind of shipments. I asked the witness whether if the instruction was not to open that bunker if the instruction could be observed without any additional labor upon his part, and he said yes.

Mr. Mortensen: Not without any additional labor.

Commissioner Prouty: You have to look at your instructions?

Mr. Mortensen: Yes, we have to look at the instructions, and then go and see the car.

Commissioner Prouty: Your testimony was that you had instruc-
tions with respect to every car which required a detailed ex-
1063 amination of that car.

Mr. Mortensen: Yes.

Commissioner Prouty: If your man in fact makes a detailed examination of every car it requires no special effort on his part to let a particular car alone.

Mr. Mortensen: It does in this way. Immediately the cars reach an icing station, we will say Yuma, the icing station is a considerable distance from the yard office, and the conductor takes the bills, the conductor will take the bills to the yard office, and our agent will go to that office and check the bills; the cars are already at the icing station, and the ice is ready on the platform and before our man can get the bills all checked up and get word to the ice-house they may have some of these cars re-iced. That has happened very frequently.

Mr. Durbrow: Leaving out of consideration for the moment these pre-cooled and pre-iced cars that move forward without refrigeration en route. You have two classes of cars, one moving under ventilation and one moving under refrigeration. And the very appearance of the cars themselves indicates to the man at the icing station that those
cars require refrigeration and the other is to move under
1064 ventilation; isn't that a fact?

Mr. Mortensen: Yes.

Mr. Durbrow: If you have a third kind of car in that train, one that is actually under refrigeration, to some extent, and which is

going through without requiring re-icing, you have to take into consideration three kinds of shipments, and that would involve additional labor.

Mr. Mortensen: In the trains as they are made up at these assembling points, and initial icing stations, the cars that are under ice are invariably put in at the head end of the train so immediately they come to the next icing station the train can be cut in two and the refrigerator cars taken to the ice-house without delay.

Mr. Durbrow: You have prepared a statement here showing the average number of cars held west of the gateways for the year ending October 31st, 1909, by months. Is that compiled from data contained in your office?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: That is, the number of days that one car was standing idle on the rails of the Southern Pacific or Salt Lake line west of the gateways for the entire year, standing empty?

1065 Mr. Mortensen: This shows the average number of cars held per day, 1705 cars, empty car days for the total, 621,325 empty car days per year.

Mr. Durbrow: How much of that empty car days should be charged to citrus fruit?

Mr. Mortensen: It would be the same percentage as the citrus business that we handle, which is forty-three per cent of the total service.

Mr. Durbrow: I would like to have this statement inntroduced and marked as an exhibit.

(The statement referred to was received in evidence and thereupon marked Defendants' Exhibit No. 19, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Durbrow: Has there been a reduction in refrigeration charges since the Pacific Fruit Express has taken charge of the business—or, I would like to ask you this: If the size of the bunkers in which the ice is placed have been increased during the last ten years in the refrigerator cars employed by the Southern Pacific Company?

Mr. Mortensen: The Armour car, the average ice tank capacity of the Armour car was 9,000 pounds. The average ice capacity of our car is 11,000 showing that they have increased the ca-

1066 pacity of one ton for each car.

Mr. Durbrow: Mr. Mortensen, have you prepared a statement of some experimental cars that moved under refrigeration and some under pre-cooling?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: I would like to have the statement introduced in evidence.

(The statement referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 20, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Durbrow: What was the showing with reference to the ice consumed in the pre-cooled and refrigerated cars?

Mr. Mortensen: I have five cars on this statement, one of them,

however, was an experiment in connection with a specially devised ventilator which has nothing to do with the balance of the cars. The first car, P. F. E. 1163, which is one of the cars that has only 8500 pounds ice tank capacity. This car was pre-cooled and moved under refrigeration and was re-iced at the icing stations en route. Started from Los Angeles, April 3rd, 1908. P. F. E. 1245, a car of the same tank capacity, moving in the same train as the
1067 pre-cooled car, the pre-cooled car consumed 13,600 pounds of ice, and the other one 16,700 pounds of ice. The car was destined to Chicago. The record is taken up to Chicago.

Commissioner Prouty: Is there a certain point beyond which the two cars consumed the same quantity of ice?

Mr. Mortensen: The icing record is very brief. The pre-cooled car was of course iced to full capacity at Los Angeles, 8500 pounds. Re-iced at Bakersfield, third, taking 900 pounds. The car that was not pre-cooled took 1700 pounds at Bakersfield.

Commissioner Prouty: Who pre-cooled it?

Mr. Mortensen: We pre-cooled it at our experimental plant at Los Angeles. At Truckee the pre-cooled car took 1400 pounds, and the car under ordinary refrigeration took three thousand pounds. At Ogden the pre-cooled car did not take any ice. I instructed our man not to put any in there. And the car under ordinary refrigeration took 2100 pounds. At Council Bluffs the pre-cooled car took 2,000 pounds. But before that the car under ordinary refrigeration took 600 pounds at North Platte. At Council Bluffs we gave the pre-cooled car 2000 pounds, which had not been re-iced at North Platte. We did not re-ice the car under ordinary refrigeration at Council Bluffs. At Savannah, Il-
1068 linois, both the pre-cooled and the ordinary refrigeration took 800 pounds.

Mr. Call: Is that pre-cooled in the same way they are now pre-cooled?

Mr. Mortensen: Yes, under the same system.

Mr. Call: There was no saving at all?

Mr. Mortensen: It did show a considerable saving. 3100 pounds total. The other two cars were cars of large carrying capacity, and the total amount of ice consumed in the pre-cooled car was 15,400 pounds. And for the car under ordinary refrigeration an even 20,000 pounds.

Commissioner Prouty: What time of the year were those shipped?

Mr. Mortensen: April 3rd. I have a statement showing the number of days en route.

Commissioner Prouty: How many days were occupied in transit?

Mr. Mortensen: I can't say from this, any more than the car left Los Angeles 5 A. M. April 3rd, and it arrived in Chicago on April 12th at 10 A. M.

Mr. Durbrow: Have you a statement of the number of Pacific Fruit Express cars which were equipped with collapsible
1069 tanks which were shipped from California since that car has been in use?

Mr. Mortensen: Since the car has been in Southern California

we have had 693 cars equipped with collapsible tanks loaded out. That was from November 1st, 1909 to March 22nd, 1910. 263 of the 693 cars were loaded by the California Fruit Growers Exchange.

Mr. Durbrow: Since when?

Mr. Mortensen: The first cars we got here about the last of December. I don't remember the date. These 263 cars were not all loaded with the tanks up. 82 were loaded by the California Fruit Growers Exchange with the tanks up, and 18 by independent shippers with the tanks up.

Mr. Durbrow: I would like to introduce this in evidence.

(The paper referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 21, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Call: In connection with that, was there any request made to the shippers to load to full capacity?

Mr. Mortensen: Yes, sir.

Mr. Call: Was there at any time a notice given not to load
1070 them to full capacity?

Mr. Mortensen: Not to my knowledge, no, sir.

Mr. Call: You didn't do it?

Mr. Mortensen: No, sir. And I am sure that no one did it as far as the Southern Pacific or Salt Lake was concerned.

Mr. Call: To whom was the request made?

Mr. Mortensen: It was made on the shippers direct at the various loading stations, and also the officials of the California Fruit Growers Exchange, and I had a talk with Mr. Dazelle about it several times.

Mr. Durbrow: Have you a statement showing random Pacific Fruit Express cars routed cia El Paso and Ogden?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: For the years ending 1908 and '09?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: I would like to introduce that statement in evidence. Mr. Mortensen, do you say these figures have been taken from the records of the Pacific Fruit Express?

Mr. Mortensen: Generally at random.

Mr. Durbrow: Prepared under your direction?

Mr. Mortensen: I wanted to be sure that we did not take cars that had made good runs, and I wired our Chicago office
1071 to give me the arriving time at Chicago of a certain number of cars. So many each month for the year, and they gave me that information, and then I ascertained from my record the time the cars left here and determined the lapsed time.

Mr. Durbrow: But you have selected these cars at random, cars that moved through without the diversion, and it shows the time that the cars made reaching the different markets as shown by these statements?

Mr. Mortensen: Yes.

(The statement referred to, so offered, was received in evidence

and thereupon marked Defendants' Exhibit No. 22, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Durbrow: You have also a statement showing the final destination of cars containing lemon shipments for the year ending October 31st, 1909?

Mr. Mortensen: Yes, sir. I have a statement showing so far as the Southern Pacific and Salt Lake are concerned the final destination of all lemon shipments made from Souther- California. But this does not include those from the Porterville district.

Mr. Durbrow: It shows the ultimate destination of these lemons, the number of cars that went into the different markets?

1072 Mr. Mortensen: Yes.

Mr. Durbrow: From Southern California territory from November, 1908, to October 31st, 1909, inclusive?

Mr. Mortensen: Yes.

(The paper referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 23, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Durbrow: Then, Mr. Mortensen, you have made a statement showing the final destination of lemon cars shipped by the Lemonera Company?

Mr. Mortensen: Yes.

Mr. Durbrow: And that is also compiled from statistical data taken out of your office?

Mr. Mortensen: Yes, sir.

(The paper referred to was received in evidence, and thereupon marked Defendants' Exhibit No. 24, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Durbrow: That is all.

Mr. Norton: Mr. Mortensen's description of the method of supervision of a car from the point or origin to destination is exactly like that of the Santa Fe Refrigerator Despatch. I am afraid I

1073 did not have Mr. Leeds, whom we were trying to have hurried along, tell fully just how the supervision occurs. He told of the necessity of having independent supervision, independent of the railroad management, and that he controls this supervision clear to destination, over foreign roads, arranging for the icing, and so forth, as well as on our own lines. I would like to state that his testimony would have been substantially the same as Mr. Mortensen's testimony is on that point.

Mr. Durbrow: Before I quit with Mr. Mortensen I would like to introduce, if your Honor please, a copy of the Railway Age Gazette, of March 18th, 1910, being No. 11, which was just called to my attention this morning, and it contains a fair description of the Pacific Fruit Express Company plant at Colton, and there are some photographs here, and there is a cut or drawing of the plant, and it may be helpful to the honorable members of the Commission who have not seen the plant.

Commissioner Prouty: If you wish to introduce anything you had

better tear out those leaves, cut them out of the book. (Pages 725 to 727 inclusive of the Railway Age Gazette.)

(Said pages 725 to 727 inclusive of the Railway Age Gazette, so offered, were received in evidence, and thereupon marked Defendants' Exhibit No. 25, received in evidence March 28, 1910,
1074 and same are attached hereto.)

Commissioner Prouty: I think in connection with the testimony of some witness it ought to appear how the Southern Pacific pays this Company.

Mr. Durbrow: That is shown in our contract.

Commissioner Prouty: Is that contract filed?

Mr. Durbrow: Yes. It shows all the arrangements.

Commissioner Prouty: You have some statement there which shows the financial results of the operations of this Company.

Mr. Durbrow: I don't know as to that.

Mr. Call: We called for it. If it has not been produced it should be.

Mr. Durbrow: I rendered you all those statements this morning.

Mr. Call: I think there is a great deal of it we did not ask for, and there is considerable that we asked for and didn't get.

Mr. Durbrow: This is compiled, Mr. Mortensen, from the record kept by the Pacific Fruit Express either at Chicago or at Los Angeles?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: And was prepared under your direction?

Mr. Mortensen: Yes, sir.

1075 Mr. Durbrow: It shows, if your Honor please, in a general way, the equipment owned, average weights of equipment, dimensions of cars, cost of cars, refrigeration minimum, mileage, and the cars of citrus fruit from Southern California iced by the Pacific Fruit Express, westbound loaded and empty movement of the cars, and the mileage paid by the Southern Pacific, Union Pacific, Salt Lake, and all other lines, and the cars of ice as supplied at the different stations of the Pacific Fruit Express. And then makes the notation that the Pacific Fruit Express does not file any refrigeration tariff. I think that there is a good deal of information contained in this statement which the Commission would like to have. It has been prepared carefully, under our direction, and I would like to have it introduced and marked.

That is a statement, Mr. Mortensen, that was prepared under direction and from the statistical data contained in the Chicago and Los Angeles offices?

Mr. Mortensen: Yes, sir.

(This statement above referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 26, received in evidence March 28, 1910, and same is attached hereto.)

1076 (Whereupon the further hearing of this matter was continued until 1:30 o'clock p. m.)

After Recess.

1:30 o'clock p. m.

Met pursuant to adjournment.

Commissioner Prouty: Any further questions, Mr. Durbrow?
Mr. Durbrow: No further questions.
Commissioner Prouty: Cross-examine, Mr. Call.

Cross-examination:

Mr. A. F. Call: Mr. Mortensen, please state the scope of your duties and authority—over what portion of the business it extends?
Mr. Mortensen: I have direct charge of all the perishable fruit business on the lines of the Southern Pacific Railway south of Santa Barbara, Bakersfield and west of El Paso; also including the Mexican lines; and also all the business on the Salt Lake line.
Mr. Call: Then you have nothing to do with the Northern California business or the Oregon business?

Mr. Mortensen: I have nothing to do with the Oregon
1077 business. The northern California citrus business—a portion of the work in connection with that business is handled in my office.

Mr. Call: Then you have nothing to do with the movement of the deciduous crop?
Mr. Mortensen: Nothing, any more than taking care of the business that may go through my territory.
Mr. Call: And the books that you keep only refer to this part of the territory that you cover—the statistical data only refers to that?
Mr. Mortensen: No, that is not correct. My records show the entire westbound car movement, no matter by what gateway they come. I also get telegraphic information as to the passing of all cars at those other points—the points outside of my territory.
Mr. Call: But not as to the eastbound business?
Mr. Mortensen: Yes; I get information covering eastbound business from my district.
Mr. Call: I know; but I say your records on the eastbound business are confined to your territory?
Mr. Mortensen: In addition to that I also get the passings east of the gateway and the arrival time at Chicago.

Mr. Call: Well, do you keep a record on all the business
1078 of California or only your territory?

Mr. Mortensen: Nothing only my territory.
Mr. Call: State what your record covers.
Mr. Mortensen: My record covers the loading in my territory, the cars in my territory, the refrigeration cars in my territory and all the data in connection with my territory.
Mr. Call: In additional to your territory, what does it cover?
Mr. Mortensen: Information as to the condition on arrival of a good many of the cars for eastern destinations, and the time of arrival, and the diversions that are accomplished east of the gateways—any diversions.

Mr. Call: What record do you have with regard to the northern California and Oregon business, for instance?

Mr. Mortensen: I have no record of the Oregon business, any more than I get a weekly report from the Oregon office.

Mr. Call: But you make no record of it?

Mr. Mortensen: I make no record of the filing of those reports.

Mr. Call: You make no record of the northern California business?

Mr. Mortensen: Except citrus business. I do of some of
1079 the citrus business?

Mr. Call: And that is nominal?

Mr. Mortensen: I have a complete record of all the citrus fruit of northern California.

Mr. Call: But then that is nominal, is it?

Mr. Mortensen: Well, it is all that there is from up there.

Mr. Durbrow: If there is any question of these records——

Mr. Call: No question at all.

Mr. Durbrow: I thought if the complainants desired inspection of the information we have furnished we would be glad to furnish it to them.

Mr. Call: I will ask what this witness knows, and then I will call for anything more I want.

You don't know anything about the general affairs of the corporation, then? You have no record of that?

Mr. Mortensen: In what way?

Mr. Call: The general financial condition of the corporation, for instance?

Mr. Mortensen: Well, I have no record as to the total revenues, or anything like that.

Mr. Call: Or the total mileage?

Mr. Mortensen: No, sir.

1080 Mr. Call: This total number of cars that you have given here in your statement—where did you get that, as to the total number of cars of the P. F. E. moved and in use?

Mr. Mortensen: That is furnished to my office.

Mr. Call: That is not part of the records of your office?

Mr. Mortensen: It is part of the records of my office.

Mr. Call: And the details as to construction, and cost, and dimensions, and so forth?

Mr. Mortensen: The details as to the construction and dimensions and so on are records of my office.

Mr. Call: Yes.

Mr. Mortensen: The cost I could not furnish any more than the general information.

Mr. Call: These figures on weights—where do you get those?

Mr. Mortensen: From the stenciled weights of the cars. They are re-weighed here particularly. We re-paint a great many of the cars here, and as they are re-painted they are re-weighed by the Southern Pacific here.

Mr. Call: Do you mean that the weights given here are re-numbered as to that four thousand and some odd?

Mr. Mortensen: That is the nearest weight.

Mr. Call: Is that an approximation or an actual amount?

1081 Mr. Mortensen: That is the actual weight of the car.

Mr. Call: And those cars weigh the same?

Mr. Mortensen: No; they don't weigh the same. There is some small discrepancies in the cars; not very much. If you have ever noticed the cars by the stenciled weight of the cars, they might vary from five to six or seven hundred pounds that is, in the same series.

Mr. Call: I notice here, for instance, by way of illustration, that you say cars numbered from one to sixty-six hundred are 44,500 pounds?

Mr. Mortensen: Yes, sir.

Mr. Call: And we sent out to get some of your stencils on those cars and we find that, for instance, car No. 2,165 is 43,400 and 5,719 is 42,800, and 5,065 is 54,200, and 661 is 43,800—just for illustration. I was wondering if you had taken an approximate average or given the actual weight?

Mr. Mortensen: Well, it is an approximate average.

Mr. Call: Approximate average is what you have intended to give?

Mr. Mortensen: Yes, sir.

Mr. Call: Well, do you know what part of your mileage is on lines other than the Salt Lake and the S. P. to Williams City?

1082 Mr. Mortensen: You mean to say——

Mr. Call: What percentage of your earnings comes from what you might call foreign lines?

Mr. Mortensen: No, I don't.

Mr. Call: Do you know what your total mileage is of those cars?

Mr. Mortensen: I don't.

Mr. Call: Do you know what your daily average mileage is of those cars?

Mr. Mortensen: No, sir.

Commissioner Prouty: Do you say "yes sir" or "no sir"?

Mr. Mortensen: "No, sir."

Mr. Call: Do you know what business those cars do—how many loads they carry in the course of a year?

Mr. Mortensen: Well, I do so far as my territory is concerned, the whole Pacific Coast territory.

Mr. Call: You have got that, have you?

Mr. Mortensen: Yes, sir.

Mr. Call: How many loads do they carry on the Pacific Coast territory?

Mr. Mortensen: I would have to look that up.

Mr. Call: Can you give that to us?

1083 Mr. Mortensen: I think I can.

Mr. Call: Can you give it to us here?

Mr. Mortensen: It is possible I can. The season ending October 31st, 1908, we loaded to the Pacific Coast territory, 24,624 cars.

Mr. Call: You don't mean last year?

Mr. Mortensen: No, sir; 1908.

Mr. Call: That is a year old?

Mr. Mortensen: Yes, sir.

Mr. Call: Have you got the season ending 1909?

Mr. Mortensen: I have it in my office, but I have it not compiled in this record.

Mr. Call: Have you right there the different products moved?

Mr. Mortensen: Yes, sir.

Mr. Call: Give that to us—the number of each of the different carloads moved to the Pacific Coast.

Mr. Mortensen: There is a number of products here. Take, first, the commodity that is lined up at Imperial Valley—melon business—849 cars; Moapa, 56 cars; Northern California deciduous and citrus business, 11,204 cars; Oregon business, 2,410 cars; Phoenix, Arizona, is eleven green fruit and 228 melons, making a total of 239 cars; Mexico, 361 cars. I think I used the wrong figure. I have
1084 then segregated as ventilated. I will give that over again. Total from the Imperial district was 1,911 cars; the total from Moapa, Nevada district, and the total from southern California, 1,856 cars; Oregon, 4,405 cars; Phoenix, 239; from Sonora, 361; from southern California, 17,417 cars—that is outside of those other districts that were segregated, Imperial district and Moapa district and Mexico district, all of them 1,124. Williams, Arizona, cantaloupes, 448. Making a total of 43,747 cars.

Mr. Call: Moved in that year?

Mr. Mortensen: Moved during the year ending October 31, 1908.

Mr. Call: How many cars did you have in service then?

Mr. Mortensen: We had 6,600 cars in service.

Mr. Call: That makes about seven loads to a car, does it?

Mr. Mortensen: That you can determine by figuring.

Mr. Call: It is about that. I wanted to know if I got my computation right. You get the number of loads of a car by dividing the total number of loads by the number of cars?

Mr. Mortensen: Yes, sir.

Commissioner Prouty: How many cars did you say you
1085 had in use at that time?

Mr. Mortensen: 6,600.

Mr. Durbrow: Did you have any cars borrowed at that time?

Mr. Mortensen: No, sir; we *n*orrowed sometimes.

Mr. Durbrow: Do you know how many?

Mr. Mortensen: I am unable to say how many? We borrowed quite a good many Santa Fe cars that year, and we also used quite a good many Armour cars.

Mr. Call: And your cars were also, in addition to this, doing business from Oregon? Weren't they?

Mr. Mortensen: The business from Oregon was included in that business.

Mr. Call: As well as Colorado apple business?

Mr. Mortensen: No; nothing east of the gateway.

Mr. Call: You did, though, do business with Colorado, didn't you?

Mr. Mortensen: We did a little. Most of that is taken care of by the Gould lines. I don't remember what car they used. Mostly the Armour cars, I believe.

Mr. Call: And, of course, in addition to this you did quite a per

cent of what you might call foreign business; that is, you rented cars out to move the Michigan peach crop, didn't you? And the
1086 Georgia peach crop?

Mr. Mortensen: I don't think so that year.

Mr. Call: The strawberry crop?

Mr. Mortensen: No, sir; I think not. We needed the cars so bad here they were all brought here. In fact, our cars haven't been used in that business recently.

Mr. Call: Were you short of cars that year?

Mr. Mortensen: We were not actually short; but we had to move cars in special trains to get them back here.

Mr. Call: That accounts for the number of empties, don't it? to a great extent?

Mr. Mortensen: Yes, sir.

Mr. Call: If you had had other cars it wouldn't have been so great?

Mr. Mortensen: If we had had more cars, the percentage of westbound movement would have been reduced. If we had had cars there they could have waited longer.

Mr. Call: If you had had cars you could have waited for it?

Mr. Mortensen: Yes, sir.

Mr. Call: That is, the stuff was there to move west, but you could not wait for it on account of the press of business here?

1087 Mr. Mortensen: To a certain extent, that is true. Not altogether, however.

Mr. Call: Of the tonnage you have enumerated here as being stuff that you could not load in those cars, there is a great many of those items you would scarcely have a carload of, would you?

Mr. Mortensen: Well, there are carloads of that very nearly of that character. It comes in mixed cars.

Mr. Call: There is a part of it very light tonnage in that list?

Mr. Mortensen: Yes, sir.

Mr. Call: Such as pianos and hair?

Mr. Mortensen: The pianos are not particularly light, but they are too large to get in the cars, you know, sometimes.

Mr. Call: But the great bulk of the tonnage you move west you can put into those cars, can't you, if you have the cars?

Mr. Mortensen: I would not say the great bulk of it; but there is a great deal of the tonnage that does move west that can come in our cars.

Mr. Call: There is about as much tonnage moving west as east, isn't there, from California?

1088 Mr. Mortensen: I don't know.

Mr. Call: So you don't know anything about the tonnage in that time?

Mr. Mortensen: No, sir.

Mr. Call: I noticed you have charged up to our account here, that is, the citrus movement, a large amount of empties which you say were on track constantly, or at different periods during the year?

Mr. Mortensen: Yes.

Mr. Call: Do you think you have made a fair computation of them as against this business?

Mr. Mortensen: I think so; yes.

Mr. Call: What per cent of your business is our citrus tonnage?

Mr. Mortensen: Well, last year, approximately about forty-three per cent.

Mr. Call: Your California tonnage is about forty-three-per cent?

Mr. Mortensen: Yes.

Mr. Call: On this question of this gateway business, where you count your cars, does that include California, or does it include Oregon as well?

1089 Mr. Mortensen: It includes—I will tell you how I figure it—is cars that reach us empty at Ogden, cars that reach us empty at El Paso and cars that reach us empty at Ashton.

Mr. Call: You count them at Ogden, do you?

Mr. Mortensen: We count them at Ogden, yes, sir.

Mr. Call: Some of them go out on the Oregon Short Line, don't they?

Mr. Mortensen: I would not have any record of them if they went to the Oregon territory.

Mr. Call: You count as empty the cars that pass Oregon?

Mr. Mortensen: Yes, sir; that is, all the Oregon that pass Ogden by the Southern Pacific.

Commissioner Prouty: Do you mean that that is forty-three per cent of the entire tonnage under refrigeration?

Mr. Mortensen: No, sir. Under refrigeration it is forty-three per cent of the total business handled in our equipment.

Mr. Call: In both ways?

Mr. Mortensen: No; eastbound.

Mr. Call: That is forty-three per cent of what?

Mr. Mortensen: That is forty-three per cent of the total Pacific Coast business. I don't know how I can express it any clearer than to say it was forty-three per cent of our entire eastbound business from the Pacific Coast.

1090 Mr. Durbrow: That is, moving by——

Mr. Mortensen: The Southern Pacific and Salt Lake lines.

Commissioner Prouty: Where does the rest of it come from?

Mr. Mortensen: Northern California and Oregon.

Commissioner Prouty: I thought you said from California? Did you say from southern California?

Mr. Mortensen: No; I mean from all of California.

Commissioner Prouty: That is forty-three per cent. Where does the balance of your business come from?

Mr. Mortensen: From Northern California.

Commissioner Prouty: Well, but you said the whole of the business from California is forty-three per cent.

Mr. Mortensen: No; I mean the citrus business represents forty-three per cent of all the business we handle from the Pacific Coast.

Commissioner Prouty: All business handled by the Pacific Fruit Express?

Mr. Mortensen: All business handled by the Pacific Fruit Express eastbound from the Pacific Coast.

Mr. Call: That includes all the California points?

Mr. Mortensen: Yes, I think so.

1091 Mr. Call: You stated that differently before.

Mr. Mortensen: Yes; but I believe, on further consideration, it includes all the Pacific Coast.

Commissioner Prouty: You don't know what percentage of your entire refrigeration for the tonnage California business of all kinds is, do you?

Mr. Mortensen: I don't believe I could state that.

Commissioner Prouty: Do you know what per cent of your entire refrigeration tonnage, the entire tonnage carried by your company under refrigeration, originates in the State of California?

Mr. Mortensen: No; I don't know accurately, no, sir. I should say at least ninety per cent of it.

Mr. Call: Then, the way you get at it, you figure up the total empties passing west from Ogden?

Mr. Mortensen: Passing west from Ogden, El Paso, and south from Ashton.

Mr. Call: You count those as empties as they pass that point?

Mr. Mortensen: Yes.

Mr. Call: Even although they might get a load from the stations beyond?

1092 Mr. Mortensen: They don't get a load from the last station beyond.

Mr. Call: I am just using that as an illustration.

Mr. Mortensen: If there had been any considerable number of them——

Mr. Call: But you don't get loads from that time on?

Mr. Mortensen: No, sir; we don't get loads from there on. Not one per cent of the business would be loaded west of the gateway, westbound.

Mr. Call: And how, if it is carrying a load say as far as the next station from the gateway and unloads there?

Mr. Mortensen: It would be counted as a load.

Mr. Call: I thought you said you counted the empties as they passed the gateway?

Mr. Mortensen: Yes, sir.

Mr. Call: Supposed the- passed the gateway but had been loaded within a hundred miles of the gateway; how do you get the count there?

Mr. Mortensen: And loaded to the gateway?

Mr. Call: No; I said empty at the gateway but loaded up to within a hundred miles of the gateway.

Mr. Mortensen: Then I would count it as an empty.

1093 Mr. Call: So that what your figures are is just simply the number of empties passing those particular points?

Mr. Mortensen: I might say, in that connection, that there is very few cars that would be loaded to any point except to a gateway point or a California point.

Mr. Call: Well, that is a guess, I suppose.

Mr. Mortensen: No; that is not a guess. It is an instruction that I know to have been issued, that they must be loaded to gateway points or to California Pacific Coast points.

Mr. Call: Then you took forty-three per cent of those passing the gateway empty and charged it up as a part of the expense of carrying the citrus business?

Mr. Mortensen: I never have had occasion to use the figures in that connection.

Mr. Call: Well, I know, but in charging up and computing the number of empties which you use in the citrus business you have simply approximated it at forty-three per cent of the total number of cars passing the gateway?

Mr. Mortensen: No, sir.

Mr. Call: How did you get it?

Mr. Mortensen: I used the total number of cars passing the gateway.

1094 Mr. Call: How did you get the per cent chargeable to citrus business?

Mr. Mortensen: I have not got it.

Mr. Call: You have not attempted to segregate or divide it up?

Mr. Mortensen: No, sir.

Mr. Call: I thought you did before and said it was forty-three per cent of it?

Mr. Mortensen: Well, I might have said that forty-three per cent of that movement should naturally be charged to the citrus business, for the reason that forty-three per cent of our total movement eastbound was citrus business.

Mr. Call: Yes. Now, for instance, you take the figures you have submitted to the Commission here on that subject, on that table that you have headed "Number of cars available for citrus loading first of each month during the years 1907 and '08 and 1908 and '09, and average number of cars available for loading daily," I notice that you have there accumulated cars, a very large number of cars, in June—2,913.

Mr. Mortensen: Yes, sir.

Mr. Call: At the first of each month. Hence, what citrus movement was that in anticipation of?

1095 Mr. Mortensen: Well, it might not have been in anticipation entirely of citrus movement; yet that large number of cars could have been available, or a large portion of them, for citrus loading.

Mr. Call: You know we don't actually ship in June but very little fruit.

Mr. Mortensen: Well, you ship quite a lot of fruit.

Mr. Call: Well, we don't ship in June.

Mr. Mortensen: 2,534 cars we handled in June, 1908 and '09.

Mr. Call: For the whole month of June?

Mr. Mortensen: Yes, sir.

Mr. Call: And on the first month you have assembled 2,913 cars?

Mr. Mortensen: Yes, sir. That is 1907 and '08.

Mr. Call: Yes. And 1908 and '09, 2,240 cars?

Mr. Mortensen: Yes, sir, that is the year that should be taken in connection with loading I have given.

Mr. Call: Now, compare that with March. In March, 1908 and '09, how many cars of citrus fruit did you ship?

Mr. Mortensen: 2,378.

Mr. Call: But you only had assembled 1,729 cars for that purpose?

Mr. Mortensen: Wait a minute. Let me see.

1096 Mr. Call: I guess you have got that a little low, haven't you?

Mr. Mortensen: No, I think not. 2,378 cars.

Mr. Call: And how many did you ship in April?

Mr. Mortensen: 4,155.

Mr. Call: Yet you only had in April 2,021.

Mr. Mortensen: Assembled on the first of the month.

Mr. Call: So that you see that those figures are erroneous—must be?

Mr. Mortensen: No. You understand that by the 15th of the month we might have three or four thousand.

Mr. Call: I know. So that these figures must be misleading as compared with the citrus movement, unless you can have a great many more in June assembled than you move during the whole month and only half as many for the whole month in March and April. It cannot have very much value as statistical information, could it, with that variation?

Mr. Mortensen: I don't know as to that.

Mr. Call: Well, now, really, as a matter of fact, you began assembling those cars in the summertime for the deciduous crip, didn't you?

Mr. Mortensen: I believe a portion of it was used for the

1097 deciduous crop.

Mr. Call: During that period you have to move a large quantity of deciduous fruit in a very short time, don't you?

Mr. Mortensen: Why, we do move large quantities.

Mr. Call: Yes. It all comes in a short season.

Mr. Mortensen: It does not come in any greater volume, however, and I don't know that it comes in as great a volume, as citrus business.

Mr. Call: You move more cars of deciduous fruit than citrus business, don't you?

Mr. Mortensen: No, I think not. But that includes all Pacific Coast business.

Mr. Call: The season is short?

Mr. Mortensen: Yes.

Mr. Call: As compared with the citrus movement?

Mr. Mortensen: The season is shorter than citrus movement.

Mr. Call: The movement of citrus fruit is an all-the-year round proposition?

Mr. Mortensen: Yes, sir.

Mr. Call: And the deciduous fruit is a short season?

Mr. Mortensen: Four or five months.

Mr. Call: Your melon crop is a short season, too, is it not?

1098 Mr. Mortensen: Yes, but that is a very small volume.

Mr. Call: That is about 2000 cars, isn't it?

Mr. Mortensen: Last year we handled some 1800 cars.

Mr. Call: How is your vegetable season?

Mr. Mortensen: The vegetable season is about as long as the citrus season. We ship vegetables practically every day of the year of one kind or another.

Mr. Call: Well, now, is not this movement of citrus fruit quite accurately forecasted for you?

Mr. Mortensen: No, sir.

Mr. Call: By the shippers?

Mr. Mortensen: It is not.

Mr. Call: I notice here in Mr. Graham's statement, or Mr. Barnhill's statement—he is the freight agent of the Santa Fe, isn't he?

Mr. Mortensen: Yes, sir.

Mr. Call: He was testifying on the former hearing of this case and said this, page 35 of the transcript: "In the season of 1900 and '01 the actual movement, as closely as we could figure, was 24,531 cars; the estimate that year was 25,000 cars. In the season of 1901 and '02, the actual movement was 17,378 cars; our estimate

1099 18,000 cars. In the season of 1902 and '03, the actual movement was 22,425 cars; our estimate 23,000 cars. In the season of 1903 and '04 the actual movement was 27,899 cars; our estimate 28,000 cars. In the season of 1904 and '05, the actual movement was 29,584 cars; our estimate was 30,000 cars. In the season of 1905 and '06, the actual movement was 34,939; our estimate was 35,500 cars. In the season ending June 30, 1907, the actual movement was 24,439; our estimate, 27,000 cars." Now, you say that——

Mr. Mortensen: You will notice there were a couple of years that were a long way off, and in the last year or two particularly the items have been very inaccurate, and of course we do not take the Santa Fe's estimate for it.

Mr. Call: Well, you ought to be able to do as well as the Santa Fe in the matter of getting this information, since you all get it from the same source, that is, the Exchange, don't you?

Mr. Mortensen: No, sir, we do not.

Mr. Call: You do not take the Exchange for it?

Mr. Mortensen: No, sir.

Mr. Call: You verify their figures, do you, yourselves?

1100 Mr. Mortensen: We to a certain extent do. We make our own estimates, you understand, entirely independent of the Exchange estimates.

Mr. Norton: Mr. Barnhill's testimony is that if he relied upon the Exchange estimates he never would have cars enough.

Mr. Call: I have read his statement there, and he is very close. He was very, very close.

Mr. Norton: And that he gets his information through our agencies.

Mr. Call: Well, no matter how he gets it. I am not taking any

credit for it. The only point is that he gets it. Can't you get it as close as the Santa Fe there, by the same means?

Mr. Mortensen: You understand it is a great deal of a matter of guess. It is impossible at first, at the beginning of a season to determine how many cars—well, we will say, it is impossible the first of January to determine how many cars we are going to load in the month of March that year. There is no way you can tell within twenty-five per cent of it and be sure of it.

Mr. Call: But as the time goes by the movement of citrus
1101 fruits is more uniform, is it not, more of an all-the-year-round proposition?

Mr. Mortensen: More of an all-the-year-round proposition, but the last year or two have proven that estimates have been a great deal farther from correct than they had been in previous years. For instance last year.

Mr. Call: This year is not proven out yet?

Mr. Mortensen: This year is not proven out yet, no.

Mr. Call: So that you will hardly be safe in saying this year is not correct?

Mr. Mortensen: No, but I might say that there are estimates right today of all the way from twenty-five to twenty-two thousand cars for this season's crop.

Mr. Call: For the whole year?

Mr. Mortensen: Yes.

Mr. Durbrow: You were going to give an instance of last year.

Mr. Mortensen: Yes, sir. I was going to say that last year the general estimate was in the neighborhood of 30,000 cars, and they actually got very close to 39,000 cars—over 39,000. The Exchange estimate last year, I believe, was something like 31,000 cars at the beginning of the season.

1102 Mr. Call: But in the last ten years, as a matter of fact last year was about the only year you were all off on your estimate?

Mr. Mortensen: I think not. In your own statement you named a couple of years where you were off from four to five thousand cars.

Mr. Call: Oh, no, from four to five hundred, was it not?

Mr. Mortensen: No, sir, I think not.

Mr. Call: I thought so.

Mr. Mortensen: Then I misunderstood you.

Mr. Matthews: Yes, from four to five hundred is the biggest variance.

Mr. Mortensen: I think you are wrong.

Mr. Call: It shows for itself.

Mr. Mortensen: I would like to have a couple of years there.

Mr. J. H. Call: What year?

Mr. Mortensen: I don't remember the year.

Mr. Call: In 1901-1902, 17,378, estimated 18,000; 1902-1903, 22,425, estimated 23,000; 1903-1904, 27,899, estimated 28,000. There are only 101 cars out of the way. Season of 1904-1905, 29,584, estimated 30,000; 1905-1906, 24,429 (?), estimated
1103 25,500; season of 1906-1907—I think that is the only one—the movement was 24,429, estimated 27,000.

Mr. Mortensen: Well, perhaps that is the one. I thought there was another. Which have been the most accurate estimates, I believe, that have been made up.

Mr. Call: Well, the movement of the crop comes on about the same time every year, does it not?

Mr. Mortensen: Well, in a general way, although the movement of the crop in southern California is getting—we don't have as heavy a movement early in the season as we used to a few years ago, in southern California.

Mr. Call: But including northern California you have it heavier?

Mr. Mortensen: We have it heavier.

Mr. Call: That is, you mean that southern California is holding off a little more to allow the northern California crops to be marketed?

Mr. Mortensen: Yes.

Mr. Call: So that you take your whole movement, however, it is a little heavier early in the year than it is today, is it not?

1104 Mr. Mortensen: I think the movement has been getting heavier of late years.

Mr. Call: And your oranges move all the year round now, every month in the year, the same as the lemons, don't they?

Mr. Mortensen: Yes, sir.

Mr. Call: And when you size your crop you can pick the usual percentage with a fair degree of accuracy, can't you?

Mr. Mortensen: Not always. This year we thought we had a great many more cars than necessary, and not more than three or four weeks ago the Santa Fe ran short of cars and we were asked to furnish cars for that business and it necessitated running special trains from El Paso for three or four days to get cars over to the Santa Fe. As we all figured it, there were plenty of cars, but the movement was a good deal heavier than we had expected.

Mr. *Mortensen:* Yet it was not greater than last year?

Mr. Mortensen: But the crop was generally considered a great deal less than last year, and hence we didn't expect such a large movement.

Mr. Call: The movement is about the same from year to year, is it not, and has been for three or four years?

Mr. Mortensen: No, sir. it is not.

1105 Commissioner Prouty: When the statements are furnished that were asked for this morning it will show what the amount has been month by month.

Mr. Call: Yes, I think that will show it.

Mr. Durbrow: The complainant asked us this morning to prepare a statement showing the damage to the grates in the bunkers by dropping ice. They didn't specify any period. Your Honors might well imagine that that would be a rather difficult statement to prepare in detail, and I would like to have them specify some reasonable period, or, say representative months.

Commissioner Prouty: Well, Mr. Call did not ask you to specify any case where the bunkers had been injured.

Mr. Call: Yes, by dropping a three hundred pound cake.

Mr. Durbrow: Any one instance?

Mr. Call: I thought the reference they made there was that the pre-cooling people loaded those large cakes, and that the only ones we did load were those very large cakes of ice. Now, if it was your own people that did it, I don't care; but if you are going to charge it up to our pre-cooling proposition I want to know the numbers of the cars.

Mr. Durbrow: It was not intended to charge it to those
1106 individual shippers.

Commissioner Prouty: Well, probably it is not necessary to do that, Mr. Call.

Mr. Call: No, I agree with you on that.

Now, you spoke of the dunnage permitted on citrus fruits, 200 pounds, by way of stripping, et cetera. I suppose, for reloading in case of breakage or damage. That is only half the dunnage that is allowed in deciduous fruits, is it not?

Mr. Mortensen: I can't say.

Mr. Call: Don't you know that dunnage is allowed in deciduous fruit shipments?

Mr. Mortensen: I don't know whether it is or not.

Mr. Call: What is the use of the dunnage allowance?

Mr. Mortensen: I don't know that, either.

Mr. Call: Now, with regard to diversions, you permit diversions on all this traffic moving in refrigerator cars, don't you?

Mr. Mortensen: Yes, sir.

Mr. Call: And the diversion privilege is exercised by all, is it not?

Mr. Mortensen: Yes, sir, to some extent, but a great deal more so in the case of citrus fruit.

1107 Commissioner Prouty: In the citrus fruit business?

Mr. Mortensen: Yes, sir.

Mr. Call: Have you that figured out, the percentage?

Mr. Mortensen: No, we haven't, but we could very readily figure it out.

Mr. Call: I notice by the figures you have given here that only about half the cars are diverted at all.

Mr. Mortensen: Well, those figures will show.

Mr. Call: Yes, and about half of those that are diverted are diverted only once?

Mr. Mortensen: Yes, sir.

Mr. Call: So that it reduces the percentage to a pretty small amount?

Mr. Mortensen: Yes, sir.

Mr. Call: Probably not over half of one per cent?

Mr. Mortensen: One-half of one per cent of the cars shipped?

Mr. Call: Yes.

Mr. Mortensen: Well, somewhere near that. Something over that, I think, but not very much.

Mr. Call: Do you know what expenses are computed in making up the refrigeration charge?

1108 Mr. Mortensen: Why, I don't know all the expenses that are computed in making it up. But I do know that the principal basis is the amount of ice used en route and the deterioration

of the car on account of its being under refrigeration and the additional expense in handling en route in the way of supervision——

Commissioner Prouty: Now, when you say the deterioration of the car when under refrigeration you mean the greater deterioration owing to the fact that it is under refrigeration?

Mr. Mortensen: Yes, sir.

Commissioner Prouty: Do you know what that item is?

Mr. Mortensen: Which item?

Commissioner Prouty: The greater deterioration by reason of refrigeration?

Mr. Mortensen: No, I am unable to say.

Commissioner Prouty: Has anybody attempted to figure that out?

Mr. Mortensen: I don't know.

Commissioner Prouty: But according to your idea is it of sufficient moment or amount to be considered in making up the rate? or is it a considerable item?

1109 Mr. Mortensen: Oh, yes, I think it is.

Commissioner Prouty: You think it is a considerable item?

Mr. Mortensen: It is quite a considerable item, without a doubt.

Commissioner Prouty: Well, there ought to be some account taken of that in fixing the regular rate, ought there not?

Mr. Mortensen: I am speaking of the refrigeration.

Commissioner Prouty: You think that is all taken care of in the refrigeration rate?

Mr. Mortensen: I don't know.

Commissioner Prouty: Do you know what percentage of your total refrigeration rate consists of ice?

Mr. Mortensen: No, sir.

Commissioner Prouty: Or the cost of ice?

Mr. Mortensen: No, sir. I should say at least two-thirds of it.

Commissioner Prouty: Two-thirds of it?

Mr. Mortensen: Very close to that.

Commissioner Prouty: Do any of those statements introduced here show the quantity of ice actually used between here and Chicago?

Mr. Call: Not those furnished us.

1110 Mr. Durbrow: Yes.

Commissioner Prouty: And the amount of ice put in also?

Mr. Durbrow: The amount of ice put in at the different stations is shown in detail in our statement.

Commissioner Prouty: And can you show the amount of ice put in in a case of a purely refrigerated car?

Mr. Durbrow: Yes, your Honor. Our statement shows it.

Mr. Call: We would like to show that, your Honors.

Commissioner Prouty: Proceed, Mr. Call, in your own way.

If I memember right, Mr. Leeds testified that sixty-five per cent of the charge made for refrigeration was ice. Now, Mr. Durbrow, have you any statement which is equivalent to that?

Mr. Durbrow: There is a statement for the season of 1908 showing the number of cars handled at different places, for instance Kansas City, for each month, and the cost of the ice for each of the cars.

Commissioner Prouty: That is, for each car that went to Kansas City?

Mr. Durbrow: Each car destined to Kansas City, Chicago, St. Louis, Cincinnati, Cleveland, New York, and moving via the different gateways, in 1908——

1111 Commissioner Prouty: So that you show the cost of the ice for each car?

Mr. Durbrow: We show the cost of the ice for each car; that is, we have taken, for instance, the first one on the statement, we take three cars for March at Kansas City.

Commissioner Prouty: Those are specimen cars?

Mr. Durbrow: Those are specimen cars. Those have been selected at random. That shows one hundred and twenty-eight; and then we have taken the average of that and taken the total aggregate of the three cars and divided by the number of cars and it shows $42.76 was the cost of the ice put into that car to Kansas City.

Commissioner Prouty: How do you get the cost of the ice—by taking the actual cars at your different stations or an average?

Mr. Mortensen: The cost of ice at each icing station.

Commissioner Prouty: And the charge to Kansas City is $60, total charge?

Mr. Durbrow: I believe it is.

Commissioner Prouty: And you say of that forty-two dollars and some cents were ice?

Mr. Durbrow: Yes; that was in the month of July. Now,

1112 in the month of July the average cost per car was $57.94. It depends largely on the season of the year, of course.

Commissioner Prouty: Can you state there what the average price of ice was?

Mr. Durbrow: There is a statement showing here the amounts paid for the ice at all of the icing stations on the line over which those cars moved, contained in this same statement, your Honor, and it is not necessary to find the general average of that, because it is shown for each particular station.

Mr. Call: The quantity of ice is not shown at any station, nor the total quantity used at any stations, though we may give a few costs, a general conclusion, at different points.

Commissioner Prouty: Well, you can cross examine on that proposition.

Mr. Call: You have no record, as I take it, of the amount of ice used at each stations?

Mr. Mortensen: I have to a certain extent, yes, sir.

Mr. Call: Have you figures showing—records of any cars, of the actual amount of ice used?

Mr. Mortensen: Yes, sir; I haven't it with me, however.

Mr. Call: I notice here on some of these pre-cooled cars that moved from the Pomona plant that you have a record here of the amount of ice which you say was used on those pre-cooled

1113 cars. Now, what were the instructions given with regard to those pre-cooled cars moving before the thirty dollar tariff went into effect?

Mr. Mortensen: No instructions given at all, any more than to ice all cars that reached their station under ice. That was my instruction to the icing agents.

Mr. Call: Well, it would apply to these cars?

Mr. Mortensen: Yes, sir.

Mr. Call: So that your instructions with regard to these cars was to ice them?

Mr. Mortensen: Yes, sir.

Mr. Call: Before the thirty dollar tariff went into effect?

Mr. Mortensen: Yes, sir.

Mr. Call: And you made no distinction in the instructions to your inspectors?

Mr. Mortensen: None whatever.

Mr. Call: So that, presumably, all those cars that needed icing were re-iced?

Mr. Mortensen: Yes, sir.

Mr. Call: Well, if I am correct in my figures you have 36 of them re-iced?

Mr. Mortensen: I don't remember just what the number
1114 was. We re-iced all of them or practically all that moved that way. I think there was one or two that went as far as Kansas City.

Mr. Call: Well, this list you have given here, how did you get that?

Mr. Mortensen: We took all the cars that were pre-cooled and sent forward from Pomona for the year 1907-1908 and the year 1908-1909, with instructions not to re-ice, and showed the amount of ice that they would require.

Mr. Call: Did you give us here a list in this tabulation you have given us of all the pre-cooled cars that you re-iced?

Mr. Mortensen: So far as my records disclose, I think so. I don't remember just how many we did take. It was made up some time ago.

Mr. Call: Well, I notice you have given the tabulation here?

Mr. Mortensen: Yes, sir.

Mr. Call: Is that a correct tabulation so far as you know?

Mr. Mortensen: The tabulation is correct, so far as I know, and so far as it goes.

Mr. Call: And it contains in that tabulation all of the
1115 cars?

Mr. Mortensen: I wouldn't say that.

Mr. Call: So far as you know?

Mr. Mortensen: I can't say as to that for sure. I will tell you how it was gotten up first: there was a claim made for the refund of refrigeration charges, and I was asked to furnish a statement showing the amount of ice we put in those cars. That was some time ago. And that statement is what we furnished, or we made it up from that statement, and of course we only took the cars on which they made claims, and I presume they made claims on all of them.

Mr. Call: And so far as you know these are the only cars that were re-iced that started from there pre-cooled and pre-iced?

Mr. Mortensen: So far as I know from that record. Of course if there were any others that were pre-cooled and sent forward with instructions not to re-ice the instructions were disregarded and the cars re-iced, unless our men fell down, as they might have done in some cases.

Mr. Call: I notice here there is a very large discrepancy in the number.

Mr. Durbrow: Can you give a record of those other cars?

Mr. Mortensen: I can give a record of any car. I think
1116 that discrepancy, perhaps, came from the fact that a great many of the cars were not billed out to not re-ice in transit. It was some little time before that was put in, contrary to instructions of the railroad.

Mr. Call: And I notice that on these cars, quite a number of them here, you appear to have gone to icing right away just as soon as you got them. I notice here quite a number you have put in a ton right here to start with.

Mr. Mortensen: At Colton, yes, sir, and some of those I inspected personally.

Mr. Call: And you found that they were not full, eh?

Mr. Mortensen: I found that they were not full, or we would not have put in a ton.

Mr. Durbrow: How many of these big blocks of ice that you manufacture would go to make a ton?

Mr. Mortensen: Well, they weigh 300 pounds a cake. It would take a little less than seven blocks.

Mr. Call: So you had put that number of blocks into a car when it reached Colton after it had been pre-cooled and pre-iced at Pomona?

Mr. Mortensen: Yes, sir.

Mr. Call: And that was under your personal supervision?

Mr. Mortensen: Well, there was one or two of the cars. I
1117 would go out there frequently. I had occasion to—I couldn't give the exact numbers of them, but I remember it very distinctly. Some of them you will note practically had a full tank of ice at Los Angeles or Colton. There was one or two of them. I don't think they put in any in that particular car. We might have put some in that.

Mr. Call: It must have taken considerable time on the way to melt out that much ice?

Mr. Mortensen: It might not have been any time on the way at all. But they might not have put anything in it, much.

Mr. Call: Have you the record in there of all the expenses in taking care of these cars?

Mr. Mortensen: Which particular cars?

Mr. Call: That is the P. F. E. cars.

Mr. Mortensen: I don't know as I have, no, sir.

Mr. Call: Of the repairs?

Mr. Mortensen: No, sir.

Mr. Call: You only got in on the repairs on this end of the line?

Mr. Mortensen: I didn't make up a statement of that. That was not under my jurisdiction.

Mr. Call: You didn't pretend to give the expense at all in
1118 connection with that.

Mr. Mortensen: That was given by Mr. Yates.

Mr. Call: You don't know anything about the cost of maintenance of cars yourself?

Mr. Mortensen: No, sir, I do not, except in a general discussion with the superintendent of car repairs and with our general officers.

Commissioner Prouty: Is there anything in these records, in these statements, that Mr. Durbrow has furnished you, that shows the expense of maintaining these cars?

Mr. Call: There was a statement furnished to us here with regard to the expense of repairs and the expense of payrolls, and I was wondering to what it applied and whether it was all or only a part.

Commissioner Prouty: Well, you testified that there were a certain number of people in your employ, that the general expenses were so much. Did that include all of the employés of the company?

Mr. Mortensen: The Pacific Coast.

Commissioner Prouty: Only for the Pacific Coast?

Mr. Mortensen: Yes, sir, that is the way I understood it.

Mr. Call: How far east does that go?

1119 Mr. Mortensen: Oh, to and including Ogden, El Paso and Portland, Oregon. It includes Portland.

Commissioner Prouty: That simply refers to the district over which you have jurisdiction?

Mr. Mortensen: Yes, and in addition to that the northern districts which are not under my jurisdiction.

Mr. Call: It includes the northern districts, does it?

Mr. Mortensen: Yes, sir.

Commissioner Prouty: If you are going to show anything of value, we should need either to segregate this business out from the balance or to know the expense of conducting the entire business.

Mr. J. H. Call: We have called for a lot of that information, and we ask for it now.

Mr. Durbrow: What——

Commissioner Prouty: What they want is to show the receipts and expenditures of this company, entire, the cost of the maintenance of equipment and different items of expense which enter into the expenses of your company.

Mr. J. H. Call: We want to segregate the citrus fruit business from the other business as to mileage or as to earnings.

1120 Commissioner Prouty: Well, that may not be possible.

Mr. Durbrow: If your honors please, the Pacific Fruit Express was called upon to furnish certain data, and the first time I saw that demand was here at the hearing, and immediately upon receipt of that demand we began to prepare the statistical data, and just one or two evenings ago I received a very large bundle of papers through Mr. Sechrist containing this information. There is a great detail. I have it there at the hotel with me, and there are a

great many records that we have there, but whoever furnished the information in Chicago, in answering one of the demands, made this notation, which is all I know of: "It is impossible to segregate the portion of mileage on citrus fruit traffic so as to show the east and westbound mileage separately; also impossible to show average mileage earnings on cars used in this Pacific traffic, also refrigeration revenue per car on same." Now, that is all I know of it. This accountant or whoever it was that prepared this data furnished me with that memorandum.

Commissioner Prouty: Well, that seems quite probable, but he might furnish you with a memorandum which would show the total mileage of your cars under refrigeration and the total
1121 receipts from various sources—so much from our mileage, and so much from refrigeration charges, and the total expenses of your company, so much for the maintenance of this equipment and so much for its employees.

Mr. Durbrow: We have a statement showing the cost of maintenance for southern California for the cars that come out here.

Commissioner Prouty: But that simply shows the outlay upon the car here. When the car comes back to southern California it goes to the shop and receives repairs, which cost from $3 to $40 per car, according to the testimony of this witness. Now, that same car may go through the shops somewhere else, or it may be the repairs here are practically the entire expense.

Mr. Durbrow: Well, I didn't obtain that information, for this simple reason, that the P. F. E. cars are put on the lines of the Southern Pacific, the Short Line, the Oregon Railway & Navigation Company and the Union Pacific and the eastern connections. Now, for instance, this potato crop moving from Idaho, Colorado and Utah, there are a large number of cars used in that service, and in transporting melons from the Imperial Valley. That is only
1122 illustrative of the use to which these cars are put, and I did not think the entire showing, for the entire business, would reflect the situation so far as the California citrus business is concerned, and I am still of the same opinion. There is no objection to furnishing any information that we have that will throw any light on that subject.

Commissioner Prouty: Your contract with the Southern Pacific Company shows the compensation which your company receives for all kinds of service. I apprehend that a part of that was from mileage and a part of it from the refrigeration charge itself. Now, counting that whole business, it would tend to show whether those figures were profitable for your company or whether they were the reverse.

Mr. Durbrow: I think the annual report will show that.

Commissioner Prouty: Well, we haven't the annual report, so far as I know. You haven't produced them.

Mr. Durbrow: I mean the annual reports of the different carriers who employ this car line.

Commissioner Prouty: Well, why don't we have a report of this car line company itself which will show just the result of its opera-

tion, the sources of its income, *the sources of its income,* the nature of its expenditures and the net result?

1123 Mr. Durbrow: Of its entire business?

Commissioner Prouty: Of its entire business.

Mr. Durbrow: Well, if your Honor thinks that will cast any light on the situation——

Commissioner Prouty: Well, we think we ought to have that report.

Mr. Durbrow: I don't know that they have made any—in fact I know that they have not made any reports such as the railroads make to their stockholders and such as are filed with the Commission under the rules of the Commission, but I think I can get the total earnings of the company, and the total cost of maintaining its equipment—I don't know how they are—in fact this is the only information I have at hand here, and this was prepared by the accountant. I think we can get that information. Certainly we can get some of it, and we will segregate it so far as possible to reflect the situation so far as this citrus fruit is concerned.

Commissioner Prouty: Proceed, Mr. Call.

Mr. Call: Now, what is the object of putting in this refrigerator car service, do you know?

Mr. Mortensen: Well, it was put in before my time, but

1124 I presume it was put in to better take care of the perishable freight business than it could be taken care of in box car equipment.

Mr. Call: It was to enable the Coast people to engage in that industry?

Mr. Mortensen: To bring the markets of the East in close touch with the producer in the territory of the West.

Mr. Call: And these items that you have included here and mentioned in your direct examination as being you think proper elements to be considered in fixing the refrigeration charge, such as telegraphing expense and diversions in transit and delays en route and depreciation in the car, you think those are all items to be taken into consideration in fixing the refrigeration rates, do you?

Mr. Mortensen: Well, I don't know that——

Mr. Call: That is what would be considered, is it?

Mr. Mortensen: Permit me, I don't know that the entire diversion expense has gone into the refrigeration charge, as a very large proportion of the cars go under ventilation anyway, and it is the duty of the carrier to provide diversion facilities. We are simply handling it for them as we are the refrigerator car system.

Mr. Call: Then so far as the refrigeration service is con-

1125 cerned, what items do you consider in making up the—or do your people consider in making up the refrigeration

Mr. Mortensen: I think I have——

Mr. Call: You already mentioned the diversions, and I didn't know but what you considered that was one of the points.

Mr. Mortensen: I don't think I mentioned the diversions in that direct connection.

Mr. Call: Well, do you know how that expense is considered by

your people, whether it is a part of the refrigeration charge, or a part of the freight rate?

Mr. Mortensen: Well, I don't know. It is just considered as a portion of the general expense involved in handling the business, both ventilated and refrigerated business.

Mr. Call: And you get mileage, I suppose on all of the business, refrigerated as well as ventilated?

Mr. Mortensen: Yes, sir.

Mr. J. H. Call: Loaded as well as unloaded?

Mr. Mortensen: So far as I know there is mileage paid for both empty and loaded.

Mr. Call: Now, that statement that you paid damage claims where decay showed up and the tanks were found to be less than half full does not apply to pre-cooled shipments, does it?

Mr. Mortensen: I didn't make such a statement.

1126 Mr. Call: You didn't make a statement that the damage claims were paid?

Mr. Mortensen: I said that the railroads had paid them. The Pacific Fruit Express does not pay them direct.

Mr. Call: They don't come against your company?

Mr. Mortensen: They are charged to our company when settled by the railroad in case the fault of the damage was due to neglect in any way on our part.

Mr. Call: Then your company does pay them?

Mr. Mortensen: Not direct.

Mr. Call: Well, not direct, but you pay them, do you?

Mr. Mortensen: Yes, we pay some direct to independent shippers, but the California Fruit Growers' Exchange have always refused to do business with us direct.

Mr. Call: But that doesn't apply to the point I am getting at, the matter of pre-cooled shipments, at all. Have there been any damage claims of that kind on the pre-cooled shipments?

Mr. Mortensen: I don't know. I understand there had been, but I don't know for sure.

Mr. Call: You don't know of any such case?

Mr. Mortensen: No, none has come to my personal knowl-

1127 edge.

Mr. Call: Now, do I understand your position with regard to this pre-cooling business that you are willing to—that the shippers should go on and pre-cool under this thirty dollar tariff and pre-ice and pre-cool their shipments and that you will let them alone?

Mr. Mortensen: No, sir, I don't know as to that. My understanding of the thirty dollar rate is that it has been, in a way, an experimental rate, and I don't know whether it is the intention to let it remain or not.

Mr. Call: But as long as it does remain are you willing to let the cars alone?

Mr. Mortensen: Oh, we are letting the cars alone so far as icing them is concerned.

Mr. Call: And not open them at all—not open up the vents or

bother the cars or interfere with them in any way, but let them go through?

Mr. Mortensen: Not that I know of. The vents may sometimes be opened by mistake or something of that kind. It is pretty hard to keep from doing it. As soon as a bunch of cars that are under refrigeration reaches an icing station the vents are the first things that are opened.

Mr. Call: Well, isn't there some way that the shippers
1128 can arrange that to protect the cars from being opened?

Mr. Mortensen: Well, by putting a notation on the waybill not to open the vent, but, as I stated before, a great many times the cars are opened before the waybills are inspected, and it has been the general custom to open all cars under inspection and re-ice them at all icing stations. A new class of traffic is pretty hard to regulate in a short time. We might eventually devise some means to overcome that.

Mr. Norton: You could easily put a card of some sort on the car indicating something of that sort?

Mr. Mortensen: That could be done, but there is danger in doing that of somebody removing the card from the car that should not be iced to one that should be iced.

Mr. J. H. Call: What lines does your company, the Pacific Fruit Express, supply with refrigerated and ventilated cars under contract?

Mr. Mortensen: The Southern Pacific, the Salt Lake, the Oregon Short Line, the O. R. & N., and the Union Pacific.

Mr. J. H. Call: And no other railroad companies?

Mr. Mortensen: Not that I know of, under contract.

Mr. J. H. Call: Do you receive mileage on those lines not included in those you have named?

Mr. Mortensen: I don't believe I understand your ques-
1129 tion.

Mr. J. H. Call: Well, for instance, you are carrying carloads of citrus fruits, we will say to a destination east of Chicago, and passing over the rails of other lines. Do you receive mileage from those lines?

Mr. Mortensen: Yes, sir.

Mr. J. H. Call: You didn't name those lines as lines supplied by your company?

Mr. Mortensen: That is not under contract.

Mr. J. H. Call: But you receive mileage from them.

Mr. Mortensen: Yes, sir.

Mr. J. H. Call: What mileage—the same as the others?

Mr. Mortensen: I presume. I think it varies. It is the standard rate of mileage paid by the various lines. I think it averages about .81 of a cent a mile.

Mr. J. H. Call: Well, now, on westbound freight do you receive a refrigeration charge for refrigerated freight moving in your cars on all westbound business?

Mr. Mortensen: There is not one per cent of our cars that are westbound that run refrigeration.

Mr. J. H. Call: I am asking you if you do receive any refrigeration charges——

Mr. Mortensen: If we furnish any ice we receive pay for it.

1130 Mr. J. H. Call: You furnish cars for transporting packing-house products from Chicago—beef and pork-packing houses, et cetera, don't you?

Mr. Mortensen: No, sir.

Mr. J. H. Call: Don't those products move in your cars?

Mr. Mortensen: An occasional carload of it; very seldom.

Mr. J. H. Call: What cars?

Mr. Mortensen: In fact we try to keep from that stuff being put in our cars. The packers have their own cars, as a usual thing, I believe.

Mr. J. H. Call: How is that?

Mr. Mortensen: The packers either own or lease specially constructed cars for that business. There is a large percentage of salt used in that business, which is very detrimental to the ice tanks. Our cars won't stand it.

Mr. J. H. Call: And east of Chicago on westbound business returning the cars, is there any character of freight that you get returns from for refrigeration?

Mr. Mortensen: I think not. There might be an occasional car, but there is none that move under a stated refrigeration charge that I know of.

Mr. J. H. Call: Those cars are used by whatever companies

1131 lines they pass over provided they don't load them with freight that is detrimental?

Mr. Mortensen: And provided they hurry them westbound.

Mr. J. H. Call: Do you know what is allowed for the use of those cars while they are kept by other lines?

Mr. Mortensen: The mileage is all, I believe.

Mr. Matthews: Your plant at Colton is so arranged that you can only cool P. F. E. cars, isn't that so?

Mr. Mortensen: No, sir.

Mr. Matthews: The apparatus only fits particular cars?

Mr. Mortensen: No, sir, it will fit other cars.

Mr. Matthews: Your engineer said differently yesterday; I just wanted the record to show it.

Mr. Mortensen: Well, it would be a very minor matter if we were going to pre-cool other than P. F. E. cars to arrange it so that we could pre-cool them.

Mr. Matthews: The apparatus is so made that it is for the P. F. E. cars in length and height and width?

Mr. Mortensen: It naturally was made for them, yes.

Commissioner Prouty: Suppose it should turn out that only those shipments can be pre-cooled and sent through in

1132 the manner detailed by the shippers, how, in your judgment, should you arrive at a fair pre-cooling charge?

Mr. Mortensen: If they are pre-cooled by the shipper we would not charge them anything for pre-cooling.

Commissioner Prouty: Well, suppose they are pre-cooled by the

shipper and pre-iced by the shipper and the car sealed up and sent through to destination with out further care. Suppose that can be done, what, in your judgment, would be a fair charge for that?

Mr. Mortensen: Well, in my judgment, if it was to be furnished that way, my judgment would be that they should be allowed to put in the ice and a charge should be made for transporting the ice, on the average amount of ice that was in the tank through to destination, which would have to be arrived at by——

Commissioner Prouty: Well, suppose you put 10,000 pounds into your tanks, would there be any of that in the tank at destination?

Mr. Mortensen: It depends on the season of the year, your Honor. I think there would be. On the average there would be some left.

Commissioner Prouty: What do you think the average
1133 weight of that ice would be going to the Missouri River or to Chicago or New York?

Mr. Mortensen: To the Missouri River and Chicago?

Commissioner Prouty: Well, to the Missouri River. What would be the average weight left going to the Missouri River?

Mr. Mortensen: I should say about from four to five thousand pounds—fully five thousand pounds.

Commissioner Prouty: And how much do you think ought to be charged a hundred pounds?

Mr. Mortensen: $1.15, or the same rate as is charged on the commodity loaded into the car.

Commissioner Prouty: Ought you to charge on the weight of that ice unless you charge on the weight of the ice used in refrigeration proper—straight refrigeration?

Mr. Mortensen: Well, the revenue received by the lines for a car under straight refrigeration.

Commissioner Prouty: You have said that the charge for straight refrigeration is made up by different elements, and one of those elements is ice and one is deterioration of the car and another one is inspection, perhaps, and so on. Now, how many of those elements exist if the shipment is sent through as a pre-cooled shipment and what element would drop out?

1134 Mr. Mortensen: The cost of the ice would drop out.

Commissioner Prouty: The cost of the ice drops out entirely?

Mr. Mortensen: Yes, sir. The others would perhaps remain.

Commissioner Prouty: The other would perhaps remain at about the same?

Mr. Mortensen: I think so.

Commissioner Prouty: Except the weight of the ice would not be as great in the case of a pre-cooled shipment?

Mr. Mortensen: No, it wouldn't be as great.

Commissioner Prouty: Would it be a fair way to arrive at a pre-cooling charge if you were to subtract from the refrigeration charge found to be a reasonable one the cost of the ice?

Mr. Mortensen: Well, it might—I would have to give that matter some thought, your Honor. I don't know whether it would or not.

Commissioner Prouty: Why wouldn't it? If it wouldn't be, why

wouldn't it? You don't furnish the ice and you do furnish the balance of the service, or, rather, you furnish less service because you do not carry as much ice and do not have to inspect the car,
1135 so that that would be an item of much importance.

Mr. Mortensen: Well, there are a great many items that have to be taken into consideration, I think, before that could be allowed.

Commissioner Prouty: Now, supposing it were possible by pre-cooling to increase the minimum carried in a car, say by sixteen and two-thirds per cent, what effect should that have upon the rate and the right to pre-cool and on the pre-cooling charge?

Mr. Mortensen: That would not reduce the weight carried; it would only reduce the cost per carload.

Commissioner Prouty: Of course, as I say, this is an expensive traffic to handle because your car is heavy in proportion to the amount of the load in the car, and you have to bring back the empty car. In other words, because the paying freight handled is small in comparison with the gross weight handled. Now, if you increase the minimum without increasing the weight of the car either going or coming back you increase the net amount which you received from the transportation without increasing the cost of the service.

Mr. Mortensen: Well, you do increase the cost of the
1136 service to some extent.

Commissioner Prouty: But not in proportion to the amount which you receive upon the same basis per hundred pounds.

Mr. Mortensen: No, sir.

Commissioner Prouty: Now, what effect do you think it should have on the pre-cooling charge if the shippers can by that means increase the minimum weight sixteen and two-thirds per cent?

Mr. Mortensen: You mean what effect it would have on the rate charged for furnishing——

Commissioner Prouty: For the right to pre-cool?

Mr. Mortensen: Well, that should be taken into consideration I might say in that connection, however, that—perhaps it has been brought here before, but there would be a great objection among certain shippers to permit a rate of that kind.

Commissioner Prouty: Well, as I understand it the only question is whether the privilege should be allowed a shipper if he desires to avail himself of it. Now, you might say, perhaps, that the shippers should be allowed to pre-cool for a certain charge provided the minimum was so and so, increased so much?

Mr. Mortensen: Yes. That should be regulated in a
1137 measure, of course, by what—that is, the way to charge for that should be regulated in a measure by what you could do it for for the shipper who could not do it for himself.

Commissioner Prouty: At the present time how many boxes can you load into one of your standard cars, loading those boxes six tiers wide and two tiers high?

Mr. Mortensen: 384.

Commissioner Prouty: So that, as a practical matter, you carry 384 boxes as a minimum?

Mr. Mortensen: Yes, sir.

Commissioner Prouty: And you would increase that how many boxes if they were loaded seven tiers wide and two tiers high?

Mr. Mortensen: It would increase it to 448 boxes.

Commissioner Prouty: If the collapsible bunkers were taken out and the fruit loaded six tiers wide and two high, how many boxes will the car contain?

Mr. Mortensen: 462, I believe, or about 460.

Mr. Call: 468, is it not?

Mr. Mortensen: 468, perhaps, somewhere along there.

Mr. Durbrow: I would like to ask one more question suggested by your Honor's questions.

I would like to ask you if a car loaded seven tiers wide
1138 under refrigeration, whether it is pre-cooled or not makes no difference, would consume more ice in transit than a car loaded six tiers wide?

Mr. Mortensen: Well, in my judgment, there would be a difference as to whether it was pre-cooled or not in the consumption of ice. A car loaded seven tiers wide and two high and sent under ordinary refrigeration would use more ice, and the load would be very poorly refrigerated.

Mr. Durbrow: What about the pre-cooling station, then?

Mr. Mortensen: The pre-cooling station, if pre-cooled under an enforced circulation such as we have, would refrigerate the whole load, and the ice in the bunkers, by properly re-icing en route, would keep it properly refrigerated to destination, I believe.

1139 JOHN F. SULLIVAN, called as a witness, having been duly sworn, testified as follows:

Direct examination:

Mr. Durbrow: What is your business?

Mr. Sullivan: I have charge of the pre-cooling plant at Colton.

Mr. Durbrow: That is a plant at which the cars of the Southern Pacific and Salt Lake lines here pre-cool and ice?

Mr. Sullivan: Yes, sir.

Mr. Durbrow: How long have you been engaged in the refrigeration business?

Mr. Sullivan: About six years.

Mr. Durbrow: I will ask you to state how long it requires to pre-cool a car at the Southern Pacific's pre-cooling plant at Colton when the boxes are loaded six tiers wide into the ordinary car?

Mr. Sullivan: Under ordinary conditions?

Mr. Durbrow: Under ordinary conditions.

Mr. Sullivan: Well, from two to three hours.

Mr. Durbrow: Have you pre-cooled cars in less time than that?

Mr. Sullivan: Yes, sir, in an hour and forty-five minutes.

1140 Mr. Durbrow: To what degree of temperature had you reduced those cars?

Mr. Sullivan: From forty-eight down to forty-one, but, as a rule, about forty-three.

Mr. Durbrow: And at the time you pre-cooled the fruit you pre-cooled the car itself, did you not?

Mr. Sullivan: Yes, sir.

Mr. Durbrow: And what is the object of pre-cooling the cars to that precise temperature?

Mr. Sullivan: Well, we do not care to go any lower than that because we cannot maintain it with ice.

Mr. Durbrow: You cannot maintain any lower temperature than that after the car has been moved out onto the road under the ice?

Mr. Sullivan: No, we couldn't depend on the ice holding it down.

Mr. Durbrow: So that if you reduce the temperature to thirty-three degrees it would rise to forty-four degrees, approximately, after the car had started on its route?

Mr. Sullivan: It would, eventually, yes.

Mr. Durbrow: I will ask you if, with the facilities at Colton, you are enabled to reduce the temperature in the car lower than
1141 forty-four degrees or forty-one degrees?

Mr. Sullivan: Yes, we can freeze it.

Mr. Durbrow: Now, I would like to ask you, if you please, how long it will require to pre-cool a car to a temperature of thirty-three degrees which is six tiers wide?

Mr. Sullivan: About four hours.

Mr. Durbrow: And how long will it require to pre-cool a car to a temperature of forty-four degrees if the boxes are seven tiers wide?

Mr. Sullivan: Well, from three and one-half to four and one-half hours, I should say.

Mr. Durbrow: Four would be a fair average, would it?

Mr. Sullivan: Yes, I think it would.

Mr. Durbrow: And how long would it require to pre-cool a car seven tiers wide and bring the temperature down to thirty-three degrees?

Mr. Sullivan: Under ordinary conditions about five hours.

Mr. Durbrow: How long does it require you to pre-cool cars there and ice the cars and move them into the trains at the present time?

Mr. Sullivan: It takes about—well, at the present time we can get them to the train in about three or three and one-half hours.

1142 Mr. Durbrow: Now, you are doubling the capacity of your plant out there, and I understand from Mr. Mortensen that the addition will be completed in about sixty days?

Mr. Sullivan: That is correct.

Mr. Durbrow: At that time you will be able to pre-cool 240 cars a day?

Mr. Sullivan: Well, I would rather say about 200. That would allow for any mishaps that might occur.

Mr. Durbrow: But under ordinary circumstances if you could pre-cool the forty cars in four hours you could pre-cool the 240 cars a day if you didn't have any mishaps?

Mr. Sullivan: Yes, sir.

Mr. Durbrow: Now, you made some tests out there at the pre-cooling plant, and I would like to have you read into the record, please, the times and the temperatures of those cars. In the first

place, I would like to ask you how many cars were set in there at the pre-cooling plant which were pre-cooled at one time?

Mr. Sullivan: There were sixteen in there.

Mr. Durbrow: And would the results as shown by your records have been any different had there been twenty cars there?

1143 Mr. Sullivan: None different.

Mr. Durbrow: Now, fourteen of those cars, as I understand it, were loaded six tiers wide and two high?

Mr. Sullivan: Yes, sir.

Mr. Durbrow: And were reduced to what temperature, please?

Mr. Sullivan (producing memoranda): Well, the initial temperature—do you care for the car number?

Mr. Durbrow: No, we don't care about the car number.

Mr. Sullivan: Well, the cars were placed at 10:15 and the blast was started at 12.25 p. m., and stopped at 3:20 p. m., or two hours and forty-five minutes.

Mr. Durbrow: Those were in cars six tiers wide?

Mr. Sullivan: Six tiers wide.

Mr. Durbrow: And what was the temperature when you stopped pre-cooling those cars?

Mr. Sullivan: Average, 41.3.

Mr. Durbrow: Now, you pre-cooled a car seven tiers wide?

Mr. Sullivan: Yes, sir.

Mr. Durbrow: Have you the length of time it required to reduce that temperature to forty-one degrees?

Mr. Sullivan: Well, I haven't it exactly. The car was

1144 lower than that before we discovered that it was down that far. We checked it up once at about forty-five, and when we took another reading it got about a block below that.

Mr. Durbrow: How long did it require to reduce the temperature to forty-five?

Mr. Sullivan: Well, this is not accurate, but this is about the time at which we observed it; 2 hours and thirty minutes.

Mr. Durbrow: To reduce the seven tiers of boxes to forty-five degrees?

Mr. Sullivan: Yes, sir.

Mr. Durbrow: And what was the temperature when you completed pre-cooling that car?

Mr. Sullivan: Well, that was forty-two degrees, rather.

Mr. Durbrow: Now, just give us that again. How long did it require to reduce the temperature of a seven tier car to forty-two degrees?

Mr. Sullivan: From 12:25 to 2:55; that is two hours and thirty minutes, as I figure it here.

Mr. Durbrow: And that is the temperature to which you ordinarily reduce your car?

Mr. Sullivan: Yes, sir.

1145 Mr. Durbrow: Now, which is the lowest temperature to which you reduced that car seven tiers wide?

Mr. Sullivan: The lowest individual temperature or the average?

Mr. Durbrow: Well, the lowest, and then strike the average.

Mr. Sullivan: Twenty-seven.
Mr. Durbrow: Now, what was the highest when you stopped pre-cooling?
Mr. Sullivan: Thirty-nine.
Mr. Durbrow: Have you the average of the temperature?
Mr. Sullivan: The average of the temperature, the initial was 55.9 and the final reading 33.7.
Mr. Durbrow: Now, you also had some device on that car that recorded the temperature from time to time; that was a thermograph, as I understand it.
Mr. Sullivan: Yes.
Mr. Durbrow: Please explain how that thermograph was placed in that car.
Mr. Sullivan: It was set in the doorway, or on a line between the two doors, and one box taken out, and the thermograph set on top of the lower box, and the second box placed on top
1146 of the thermograph, and it was allowed to remain there during the entire time of pre-cooling.
Mr. Durbrow: And have you those records that were recorded by that thermograph?
Mr. Sullivan: I have, yes, sir.
Mr. Durbrow: I would like to have them introduced in evidence.
Mr. Call: Do I understand that was in the car or in the fruit in the bulk?
Mr. Sullivan: That was right under the bottom box, and the box on the second tier was set on top of that.
Mr. Durbrow: So that it was about in the center of the car?
Mr. Sullivan: Just about in the center of the car.
Mr. Call: It was not in the fruit?
Mr. Sullivan: Oh, no, it was not in the fruit.
Mr. Durbrow: These readings of the thermograph you have given us, were those taken from the oranges themselves?
Mr. Sullivan: Yes.
Mr. Durbrow: Was that the center of the oranges?
Mr. Sullivan: The center of the oranges, and one or two readings, the inside of the second orange from the outside.
1147 Mr. Durbrow: The inside of the second orange from the outside of the box?
Mr. Sullivan: Correct.
Mr. Durbrow: And those degrees of temperature that you read into this record, on account of the seven tier car, were taken from the inside of the second orange from the outside of the box?
Mr. Sullivan: That is, not all of them, but in one or two cases where we could get in there without destroying the other oranges.
Mr. Durbrow: You know what those collapsible bulkheads are?
Mr. Sullivan: Yes, sir.
Mr. Durbrow: Have you had any experience in trying to induce shippers to load cars with the bulkheads collapsed?
Mr. Sullivan: I have.
Mr. Durbrow: Please state your experience in that particularly?
Mr. Sullivan: The main objection was that the load was too large,

on account of so many cars going to smaller markets. The load had too many boxes, and they didn't care to increase the minimum; that is, they thought the number of boxes was high enough at
1148 present, or, if anything, a trifle high, because too many markets could handle a small car but could not take care of a large car.

Mr. Durbrow: Can you name some of the shippers who made those statements to you?

Mr. Sullivan: I haven't a memorandum here, but, offhand, I might mention two or three.

Mr. Call: It don't seem as if we care about that.

Commissioner Prouty: I don't think we will go into that

Mr. Durbrow: I just wanted to confirm this witness' statement, that is all.

Commissioner Prouty: Well, you cannot speak, perhaps, for all of the citrus fruit growers. We have to count those you cannot speak for as well as those you can, of course.

Mr. Call: I think we speak for all but that one concern.

Mr. Durbrow: Do you speak for ninety per cent of the growers?

Mr. Call: There is over ninety per cent in this suit, and we speak for all of those and a great many besides.

Mr. Durbrow: Do you speak for all that is in the Exchange itself?

Mr. Call: We speak for all that are in the Exchange itself,
1149 yes. We feel this way about it: There are some of the people that, as you say, would like to have a smaller load go to a smaller market, but they are willing to waive it all for the purpose of having this matter considered, as they all feel they will get it in the tariff, just as you always had it in the tariff anyway up to very recently, that we can build a load six wide and two high as a minimum, and as soon as this suit is over we feel that we will have it in the tariffs again, and we might as well have it now as to wait until then, and have advantage of it, and whatever their desire may be with regard to using a smaller car—I am instructed to say that all we represent, and I am also authorized by several of those that we have in this suit to say that they are willing to have that minimum placed, and I think that includes everybody but that Armour concern.

Mr. Durbrow: Are those people you speak of, who have objected to the loading of this increase of minimum, members of the California Citrus Union?

Mr. Sullivan: There was one member at Highgrove objected to it. Oh, you say the Citrus Union?

Mr. Durbrow: The Citrus Union.

Mr. Sullivan: Oh, no, the Citrus Union didn't object to it.
1150 I only saw one particular member of the Citrus Union, and he was not loading at that time, and he had no objection, only he remarked that the car was rather a large one.

Mr. Durbrow: Well, were any members of the Exchange you speak of making these objections?

Mr. Sullivan: Well, at Highgrove, that man said the load, he thought, was altogether too large.

Mr. Durbrow: So that that is one out of the number. Did you see anybody at Redlands?

Mr. Sullivan: The Exchange man at Redlands, I saw him; he refused absolutely to load the cars.

Commissioner Prouty: Well, these men might have been of that impression then and a different impression now. If they could get the same rate with a light minimum they might prefer that. If they could get a better rate with a lower minimum they might prefer it. If their minimum was to be increased any way, why, they might say, "We will submit to the increased minimum, and we will see, as Mr. Call says, what we can get in exchange for it then." It depends on what was done with the rate and refrigeration charge, as well as with the minimum. In the interest of economical transportation the cars ought to be loaded as heavily as possible; no question about that.

1151 Mr. Durbrow: No question about that, but as I have stated to your Honor this morning, the traffic officials advise me that they would naturally like to see the minimum increased; but I merely make this suggestion because I thought your Honors ought to give it consideration.

After a shipment of citrus fruit has been brought to the point of refrigeration, and it is allowed to become heated, the temperature of the commodity is permitted to rise, what effect has it upon the commodity itself?

Mr. Sullivan: Well, I would say it would depreciate the fruit if it raised to any noticeable extent. You pull it down to about thirty-three or thirty-four and let it go back up to forty-four or forty-five, and while it might not be of any great damage, it would not do the fruit any good.

Mr. Durbrow: Suppose the thermometer were permitted to rise above forty-five, up to fifty or fifty-five?

Mr. Sullivan: Well, of course if it would rise the greater the damage or the greater the likelihood of damage.

Mr. Matthews: Prior to yesterday what tests had you made on bringing the temperature down on oranges to thirty-three degrees?

1152 Mr. Sullivan: I have never made any special tests before yesterday.

Mr. Matthews: You say that you can bring down the temperature of a car of oranges, loaded seven tiers wide and two high, in five hours, down to thirty-three degrees?

Mr. Sullivan: Yes.

Mr. Matthews: What do you base that statement on?

Mr. Sullivan: What I did yesterday.

Mr. Matthews: That is the only test you have made?

Mr. Sullivan: And I did it in less time than I figured on, and I think that I could do it again.

Mr. Matthews: Prior to yesterday did you ever make any tests of any kind on pre-cooling like this?

Mr. Sullivan: Oh, yes. I took a record of cars, that is, not indi-

vidual cars but one car out — a particular bunch, that were pre-cooled.

Mr. Matthews: What cars have you pre-cooled prior to yesterday?

Mr. Sullivan: You mean the numbers of the cars?

Mr. Matthews: Yes.

Mr. Sullivan: Oh, I think, as near as I can figure it up,—I have a rough estimate of it here (referring to memorandum). In
1153 the neighborhood of 140 or 150 cars of oranges.

Mr. Matthews: When were they pre-cooled?

Mr. Sullivan: We commenced pre-cooling oranges very early in this month—March.

Mr. Matthews: Nothing prior to this month?

Mr. Sullivan: No, not prior to this month.

Mr. Matthews: Now, on this car yesterday, this trainload, where did that come from?

Mr. Sullivan: This car yesterday? It came from Redlands Junction.

Mr. Matthews: When did it come?

Mr. Sullivan: It came in the night before.

Mr. Matthews: Was it lying at your plant or not?

Mr. Sullivan: No, it was not at our plant until about 10:30 yesterday morning.

Mr. Matthews: When did you take the temperature of those cars?

Mr. Sullivan: The original temperature?

Mr. Matthews: Yes.

Mr. Sullivan: Just immediately upon being placed at the plant.

Mr. Matthews: What time was that—10:30?

1154 Mr. Sullivan: No, about 11:15 or 11:20, after we were absolutely certain that our thermometer registered correctly showing the exact temperature of the fruit.

Mr. Matthews: What was the temperature at 10:30?

Mr. Sullivan: You mean the temperature when I took it? Do you want the average?

Mr. Matthews: No, I want it the way you took it. How many cars were there?

Mr. Sullivan: You mean this seven tier car?

Mr. Matthews: Yes.

Mr. Sullivan: Just one car—one car seven tiers wide.

Mr. Matthews: And there were a number of others six tiers wide?

Mr. Sullivan: Yes.

Mr. Matthews: You took the temperature at 10:30, as soon as the car got there?

Mr. Sullivan: Well, some time around 11 or 11:20.

Mr. Matthews: Now, how did you take it?

Mr. Sullivan: Put our thermometers in the oranges.

Mr. Matthews: How many thermometers did you put in the car?

Mr. Sullivan: In this car I think we had ten thermometers.

1155 Mr. Matthews: Where did you place them?

Mr. Sullivan: We put three across the—in the boxes, right close to the ice tank, on tier No. 1, and we put one thermometer in tier number 8, the top box, and another one in tier number 9, over

on the left side in the third row, on the south side, and we put another thermometer in row number 11, the top box. We put another one in row 15, in the bottom box, and we had another in row 18, in the bottom box, also one in row 18, top box, and one in row 18, on the north side of the car, in the top box.

(A circular paper or chart for recording temperature readings, marked in pencil "Started at 12:25 P. M.", was received in evidence and marked Defendants' Exhibit 27, witness Sullivan, and same is attached hereto.)

Mr. Matthews: Now, did those thermometers register different temperatures at 10:30 when you took them?

Mr. Sullivan: Well, I will read to you the readings as we got them: 52, 52, 53, 54, 50, 52, 50, 52, 50.

Mr. Matthews: All around 50?

Mr. Sullivan: Yes, giving a general average of 51.9.

Mr. Matthews: On the seven row car——

Mr. Sullivan: That is the seven row car I have just described.

Mr. Matthews: When did you turn on the cool air?

Mr. Sullivan: Started at 12:25 p. m.

Mr. Matthews: When did you make the test of the tem-
1156 perature on that?

Mr. Sullivan: At 2:55.

Mr. Matthews: What did your thermometer show at that time?

Mr. Sullivan: A trifle less than 42.

Mr. Matthews: Is that an average?

Mr. Sullivan: Just as nearly an average as we could get, roughly. We took our record on a slip of paper and got the average.

Mr. Matthews: What was the arrangement of the thermometers at that time in the different boxes?

Mr. Sullivan: I couldn't say actually as to that. I just give you the average of the ten thermometers.

Mr. Matthews: You didn't take that at that time?

Mr. Sullivan: No, I didn't make a note of that.

Mr. Matthews: On the last test did you keep a separate record of each thermometer?

Mr. Sullivan: Yes.

Mr. Matthews: What was the range of that? Can you give me the different readings?

Mr. Sullivan: Yes, sir: 30, 39, 32, 34, 38, 34, 32, 27, 36, 35.

Mr. Matthews: So you found all those different tempera-
1157 tures in that one car?

Mr. Sullivan: Yes, sir.

Commissioner Prouty: Now, take that thermometer which registered 30, where did you say that was placed?

Mr. Sullivan: Right up against the bulkhead in the ice tank.

Commissioner Prouty: Was it inserted into an orange?

Mr. Sullivan: Yes, sir.

Commissioner Prouty: So that, in the center, the temperature of that orange was 30 degrees?

Mr. Sullivan: The temperature of that orange was 30 degrees.

Commissioner Prouty: What is the reason the orange was not frozen?

Mr. Sullivan: I don't know. My understanding is that oranges will not freeze at 30. I have nothing to substantiate that statement, only statements from others, however.

Mr. Matthews: How did you take the temperature in the center of the box?

Mr. Sullivan: How did we get our thermometer in there?

Mr. Matthews: Yes.

Mr. Sullivan: We just forced it right through.

1158 Mr. Matthews: Did you cut open the orange or anything of that kind?

Mr. Sullivan: No.

Mr. Matthews: Just placed it between the oranges?

Mr. Sullivan: Oh, no, put it right in—well, possibly it was not in, but I have no doubt it was in the orange. I couldn't see the end of the thermometer.

Mr. Matthews: And you didn't open or unpack it?

Mr. Sullivan: I didn't open it at all, just left it as it was originally packed.

Mr. J. H. Call: You didn't cut any hole in the orange?

Mr. Sullivan: No.

Mr. J. H. Call: Can you state what the equivalent is in ice to pre-cool a car of oranges?

Mr. Sullivan: You mean what——

Mr. J. H. Call: It was stated here in some scientific terms, but I wanted to know if you knew what the equivalent was, in tons of ice or in tons of refrigeration to pre-cool a car of fruit.

Commissioner Prouty: Two tons of refrigeration is equivalent to one ton of ice. Now, can you say how much refrigeration is required to pre-cool a carload of fruit?

1159 Mr. Sullivan: No, I do not. We have not tried to determine that; that is, if we have it has not been brought to my notice. We haven't got quite that far along yet. I endeavored, though, to get that statement, but was unable to do so for several reasons.

Mr. Matthews: You said it would have a bad effect on the fruit to bring it down to a certain temperature, 33, and then let it go up again. What do you base that statement on?

Mr. Sullivan: Well, anything. You take anything out of cold storage and let it set around and get warm and it always has a bad effect on it.

Mr. Matthews: That is the only thing you base it on; you have never made any test or experiment?

Mr. Sullivan: No, just from my general notice. Long before I was familiar with this business at all I knew about that.

Mr. Matthews: In forcing this current through the car, how much leakage do you figure there will be in a car?

Mr. Sullivan: We don't figure there will be any.

Mr. Matthews: Do you carefully insulate the cars so that you can make sure none will escape?

Mr. Sullivan: Escape from the cars?

Mr. Matthews: Escape from the cars.

1160 Mr. Sullivan: Well, we fill our water traps with water and the doors we have rubber tubes around them which we expand with about 40 pounds of compressed air, and we also have the same equipment on top.

Mr. Matthews: Are you an engineer?

Mr. Sullivan: No.

Mr. Matthews: Do you know how long it will take to bring a carload—the temperature of a carload of oranges loaded seven rows wide from 90 to 33?

Mr. Sullivan: Oh, I would just have to guess at it. I would say about six hours.

Mr. Matthews: You have never made any tests of that?

Mr. Sullivan: No.

Mr. Matthews: All this fruit you pre-cool has been pretty nearly frozen when you made the test——

Mr. Sullivan: Oh, no, I have other reasons that would not bear out that statement. You take celery and cabbages——

Mr. Matthews: You have frozen celery, haven't you?

Mr. Sullivan: I don't know that I have ever done so personally, no.

Mr. Durbrow: These thermometers that you used yesterday are pointed at the end and are specially constructed to pierce

1161 the orange and strike the center of the orange so that the mercury in the first instance is in the center of the orange?

Mr. Sullivan: Yes.

J. K. Butler was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Durbrow: What is your position, please?

Mr. Butler: Traffic statistician of the S. P.

Mr. Durbrow: And are you located at San Francisco?

Mr. Butler: San Francisco.

Mr. Butler: In the traffic department of the Southern Pacific Company?

Mr. Butler: Yes, sir.

Mr. Durbrow: I would like to ask you if you have prepared a statement showing the number of orange and lemon cars shipped from California from 1884 down to and including 1908?

Mr. Butler: I have.

Mr. Durbrow: I will loan your Honors defendants' copy and introduce them as I go along. They are in the order in which I will introduce them.

1162 Now, just explain what that statement shows?

Mr. Butler: Shows a tremendous development of the orange industry, and the number of cars shipped from the very early years, and also of the lemon industry.

Mr. Durbrow: Now, from the first year, from 1884 down to 1892,

there is no segregation of oranges and lemons so that the figures for those years represent the total citrus movement itself, do they not?

Mr. Butler: Yes, they include lemons, evidently. We could not segregate for that early period.

Mr. Durbrow: This statement also shows the minimum effective during the dates during which those shipments moved?

Mr. Butler: Yes, and the rates.

Mr. Durbrow: And it also shows the rates that were effective, and then upon the lower part of the statement it shows the duty that the Sicilian lemons or the growers of Sicilian lemons were obliged to pay in order to land their commodity in the United States?

Mr. Butler: It does.

Mr. Durbrow: What is your authority for this statement?

1163 Mr. Butler: That is compiled from the Pacific Fruit World and the California Cultivator, and such other early researches also; I believe they were verified, to a certain extent, by Prof. Wickson's books on the early horticulture of citrus fruit in this State.

Mr. Call: What has that reference to?

Mr. Butler: The first statement that was handed to me. The number of acres in the early years—1884 and 1886.

Mr. Durbrow: And it shows the increase in the number of acres of these different commodities that have been shipped also, does it not?

Mr. Butler: It also shows that the orange industry developed from a thousand up to 26,000 cars under the $1.25 rate.

Mr. Durbrow: It goes to prove, does it not, that this industry was developed under the $1.25 rate?

Mr. Butler: It certainly did.

Mr. Durbrow: And that the lemon industry developed also under that rate, of course, because we haven't the division of the movement of oranges and lemons for the first few years of lemons.

Mr. Butler: The lemon industry increased from 500 cars in 1883-1884 to 2700 cars in 1903-1904, that being the time when the rate became reduced to $1.

1164 Mr. Durbrow: Is there anything further you wish to say in reference to that statement?

Mr. Butler: No, I think not, except that the duty there in the early years is shown per thousand fruit, which must have been rather awkward in figuring up their decay and the possibility of importation, and also that the early rates shown on there were in effect only to a limited territory, St. Louis, for instance, and Chicago, and beyond that it was based on a combination of locals, which, as I understand, made about $1.25 per box to get into New York, the locals beyond Chicago, and as to 1882, which is not shown on there, I understand that rate to be some $650 a car, although I understand that but a few cars moved at that time.

(The statement referred to, so described, was received in evidence and thereupon marked Defendants' Exhibit No. 28, received in evidence March 28, 1910, witness Butler, and same is attached hereto.)

Mr. Durbrow: Now, the next statement that you have prepared shows the shipments of lemons from southern California and the number of cars of lemons from southern California and the imports from foreign countries for the same time, estimated on the number of boxes, and estimated on the number of cars, and I would like to have you state, please, what change there has been since 1889, to 1900, so far as the southern California production is concerned. What has been the increase in that production?

Mr. Butler: Well, roughly speaking, out of a total con-
1165 sumption for the country, there shown, of some 7500 cars, California supplied only one-seventh, but at the present time there are some 11,000 cars consumed in the United States and over sixteen per cent of the consumption is supplied from California instead of a merely nominal quantity in the beginning. I notice that California production is increased in lemons 328 per cent since 1899 and 1900, and the imports have decreased 10.9 per cent, or, in other words, eleven per cent..

Mr. Durbrow: For the same time?

Mr. Butler: For the same time.

Mr. Durbrow: Now, what does that indicate to your mind with reference to the competition between the California and the Sicilian grown lemons?

Mr. Butler: The Sicilian grown lemon comes in here because it must come in here because there are not enough California lemons to supply the demand. The California lemon goes east as far as it can, and it is sold in competition with the Sicilian lemon just as far as its gross amount of production will allow it to be, and it is steadily gaining ground on the Sicilian lemon.

Mr. Durbrow: Now, this statement also shows the average value of lemons at New York per box when they are imported under
1166 the tariffs that have been in effect?

Mr. Butler: Lemons and oranges, yes.

Mr. Durbrow: And will you please read the grand totals into the record?

Mr. Butler: I have taken these for nine years, lacking one month. At that time I could only get eleven months of the calendar year, 1909, and I find that the value of all the lemons for these nine years that were imported was some $30,956,000, and the quantity imported during such time was one hundred and forty million odd pounds, or, rather, one billion four hundred and four million pounds. The average value per pound, in cents, is 2.204 cents.

Mr. Durbrow: That is per pound?

Mr. Butler: That is per pound, which, figured on the——

Mr. Durbrow: On the per box basis.

Mr. Butler: On the eighty-four pound box, would be a box worth $1.85, without any duty added.

Mr. Durbrow: What is the present duty, added to that?

Mr. Butler: $1.26 per box.

Mr. Durbrow: And that is a box of eighty-four pounds?

Mr. Butler: A box of eighty-four pounds, putting it on the standard of the California production.

1167 Mr. Durbrow: And what is the duty on the box itself?

Mr. Butler: The duty I have estimated at three cents, it being thirty per cent ad valorem, and I think that is about two cents too low, since——

Mr. Durbrow: What would be the total duty put on the shipment of a box of lemons, including the box itself?

Mr. Butler: The total cost of importing, that is, including the value at Sicily and the freight rate bringing it into the United States, on that basis, would be $3.14 per box on the average price for nine years.

Mr. Durbrow: And what are the increases with reference to oranges?

Mr. Butler: In the same way, it would be $1.81 a box.

Mr. Durbrow: Have you anything further you wish to say in reference to that statement, Mr. Butler?

Mr. Butler: I think not, except to call attention to the quantity of oranges imported into the country compared with the consumption.

Mr. Durbrow: I would like to introduce this statement in evidence and have it marked in order.

(The statement referred to was received in evidence and thereupon marked Defendants' Exhibit No. 29, received in evi-
1168 dence March 28, 1910, and the same is attached hereto.)

Mr. Durbrow: Now, you have prepared a statement showing the cost of placing a box of lemons in the markets, different markets of the United States, when the shipments move via New York and other ports. Now, directing your attention particularly to shipments that go via New York, I would like to have you state, please, what is the cost of placing these different shipments, in a general way, in the different markets here, and explain this statement to the Commission.

Mr. Butler: I will read the head of that statement, probably it will be just as well: "Accepting the citrus fruit growers' statement that it cost $1.48 per box to produce lemons in California and put them on cars (see schedule C of tariff and Brief of facts submitted),——"

Mr. Durbrow: That is the brief of facts that was submitted by the complainants in the case when they were endeavoring to induce Congress to increase the duty on lemons?

Mr. Butler: Yes, sir.

Mr. Durbrow: And that is authority for that figure?

Mr. Butler: Yes, sir. That is from that, but $1.48, I think that is a little high in relation to some of the figures that have been introduced here in evidence, "and adding thereto 96.6 cents
1169 per box for freight at $1.15 per hundred weight, the cost of destination would be $2.446 per box of California lemons.

Mr. Durbrow: That is at the difference distances you have shown on your statement?

Mr. Butler: Yes, sir, "using the average cost of imported lemons shown in 1908——"

Mr. Durbrow: Let me interrupt you—the cost or the value of the cost of placing of a box of California lemons in these different markets would be the same as—because the rate is blanketed.

Mr. Butler: The same everywhere, except in southeastern territory.

Mr. Durbrow: So that we can lay that down as a basis of comparison of cost?

Mr. Butler: Yes, sir.

Mr. Durbrow: And it is the same except on the imported lemons, the price varies according to the scale the distance may be?

Mr. Butler: Yes, sir.

Mr. Durbrow: Proceed.

Mr. Butler: "Using the average cost of imported lemons
1170 shown in 1908 of $2.85 per box for 992,946 boxes imported by New York dealers (see tariff schedule C, page 4035-4.)—"

Mr. Durbrow: Now, that is the same as was introduced at some hearing before the Congressional committees when the California shippers were endeavoring to have the duty increased on the lemons imported by foreign countries?

Mr. Butler: It is. In the importers' affidavit—they made affidavit to their actual cost of importing; and, by the way, I used the lower figure. The evidence before it showed a higher average figure per month the year before, but I have showed the lower figure. I have deducted from the tabulation they have made in their affidavit 14 cents for wharf labor and auction charges, because that was segregated in their tabulation and is included in the $2.86, and adding thereto 42 cents increase of duty, which is half a cent a pound, an increase Congress granted.

Mr. Durbrow: That is the duty that was provided in the last session of Congress?

Mr. Butler: Yes, sir. "We have cost of imported lemons at New York of $3.14 per box." Which you will notice is exactly the same figures as the customs figures for eleven years, shown on the former statement to a cent. Now, using that figure as a basis for
1171 importing at New York we find that they can get a box of lemons in there from Sicily on an average of $3.14 cost and the California grower can put his lemons, figured on the basis of $1.48 on the cost in California, can put his lemons in the New York market at $2.446 and have an advantage in New York over the Sicily lemons of 69 cents per box in his selling.

Mr. Durbrow: Now, Mr. Butler, I want to ask you to extend those figures and in the last column on your statement is shown the difference in favor of the California lemon.

Mr. Butler: Yes.

Mr. Durbrow: And without exception in the markets that are shown here, and these are representative markets, the California lemon grower actually has an advantage over the Sicilian grower, when you add the duty imposed by the Government of the United States to the cost of landing a lemon at New York, the port of entry?

Mr. Butler: He has an added allowance over that of 69 cents, and more than a dollar, and I may say that in that I used the lowest

rates of distribution I could find out of New York, which was the rail and water rate via the Great Lakes.

Mr. Durbrow: In every instance it shows an advantage in
1172 favor of the California shipper?

Mr. Butler: In every instance.

Mr. Durbrow: I would like to introduce that statement in evidence and have it marked.

(The statement referred to, so offered, was received — evidence and thereupon marked Defendants' Exhibit 30, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Durbrow: Now, you have prepared other statements which are about the same as that exhibit, that you have used different ports of entry?

Mr. Butler: Yes.

Mr. Durbrow: Now, here, the next statement as I find it, is a statement showing the difference in favor of the California growers when the lemons move via the Port of New Orleans and Mobile, and your conclusions have been derived from the same process?

Mr. Butler: Exactly.

Mr. Durbrow: I would like to ask you, if this statement, likewise, shows that the California lemon grower is at an advantage as shown by cents, in the last column, over the foreign grower of lemons?

1173 Mr. Butler: He has a great advantage and I call attention to the fact that is worked on the basis of $1.40 for a hundred weight in most cases in the new tariff. That is, without eastern territories.

Mr. Durbrow: I would like to have that introduced and marked.

(The statement referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 31, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Durbrow: On the next statement, Mr. Butler, is shown the advantage of the California shipper in the shipments moved via the Port of Baltimore, because some of these lemons are imported through that Port.

Mr. Butler: Yes.

Mr. Durbrow: And does this statement, like the other statements, invariably denote that the California lemon grower is at an advantage over the Sicilian or Italian grower in marketing these products in different markets?

Mr. Butler: The same way.

Mr. Durbrow: In landing his product here, including the cost?

Mr. Butler: Yes. That shows the higher advantage there.
1174 That is also $1.40 for that southeastern territory.

Mr. Durbrow: Now, I would like to offer this in evidence and have it marked.

(The statement referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 32, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Durbrow: Now, you have prepared a statement comparing the carload rate applying from Florida and California to various destinations, in which you show the rate per box and the rate per ton per mile on oranges and lemons, and I understand the figures you have showed in this statement are based on the decision that was rendered by the Interstate Commerce Commission prior to the very recent decision in the Florida case?

Mr. Butler: Yes, sir.

Mr. Durbrow: I think 1168 was the number of the case.

Mr. Butler: 1168, June 9th, 1908.

Mr. Durbrow: Using the rates established by the Commission in that decision as a basis for comparison, you have taken the California rates applying on lemons and applied them here to show the difference in the rates that are paid by the shippers to
1175 the two competing shipping points?

Mr. Butler: Yes.

Mr. Durbrow: Will you please state the results, in a general way, of that comparison?

Mr. Butler: Well, it shows that the distance for the same distance, the Arcadia—I have used Arcadia, Florida, as the point of comparative cost. The Commission used that as a fair point in their former basis and it shows from Arcadia, Florida, the Florida man can distribute to the same market that the California man can and that his rate is actually lower than the other in unit of railroad terms, that is, per ton per mile basis, universally, and the difference in the rate per ton per mile in favor of the California growers is shown in the last column of the statement, the last two columns.

Mr. Durbrow: I would like to introduce that in evidence and have it marked as an exhibit.

(The statement referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 33, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Butler: I may say, there is no showing—we used the
1176 lowest combination of rate there via Savannah and steamer rate to New York instead of showing the whole railroad rate, which is some sixteen to eighteen cents higher.

Mr. Durbrow: Although the Commission decided that was not a fair comparison?

Mr. Butler: Yes. They decided it was not, in a measure, a fair rate.

Mr. Durbrow: You also have a similar statement and basing the statement upon the last decision rendered by the Commission in the Florida case?

Mr. Butler: Yes. This was decided February 8th, 1910, and this is a statement of rates on citrus fruits applying from Florida in car lots under the Interstate Commerce Commission order in Dockets Nos. 2566 and 1168, decided on the dates specified there, vs. rates on oranges from California, and you have taken Arcadia, Florida, as the origin, as you did in the other cases as the point of origin as a fair representative point.

Mr. Butler: I have.

Mr. J. H. Call: That is based on the per ton per mile rate or based on the rate per mile?

Mr. Durbrow: By the ton per mile.

1177 Mr. Butler: The rate per box——

Commissioner Prouty: Is the rate, Mr. Butler, per box?

Mr. Butler: The rate per hundred pounds—it is the rate per box and also the ton per mile figure worked out.

Mr. Durbrow: I will work that out a little better as we go along. You have shown in the first column the rate per box on Florida lemons, the basis also being 80 pounds on an average, the estimated weight as against 72 on California shipments; then in the next column you have instanced that, as you have applied the average rate of 72 pounds on Florida shipments, just as they boxed them for the uniform rate, as California ships, so that in the second and third columns, one against the other, given a comparison of rates on the same weight box, 72 pounds.

Mr. Butler: Yes.

Mr. Durbrow: You have taken, for instance, the distance from Arcadia, Florida, to these destinations that are shown in the first column to compare with distances from Los Angeles via the short line to the same points, showing in each instance that the rate from California to these different points is much greater than it is over the railroad from Arcadia, a distance of 1356 miles from Florida

1178 to Chicago as against 2265 miles from Southern California, and then you have showed the rate per ton per mile, as I understand it, from the railroad shipping point to the destination shown, on the rate per ton per mile from the California points.

Mr. J. H. Call: Of course, this is bordering on the question of rates, but the question of comparison between those rates is reviewed by the Commission, by the Tenth Interstate Commerce Decisions, and the Commission pointed out that the question didn't give us the ton per mile distance at all for the greater length of the haul made, but more of a difference in rates on a comparison of the California rate with the Florida rate.

Mr. Durbrow: But, if your Honor please, this statement discloses two things. This decision did establish the proposed—comparing the rate that has been established by the Commission as the rate applying to California particularly, I think it might serve some purpose, and we would like to introduce that for that purpose.

Commissioner Prouty: You may introduce it, but the effect of it is for argument.

Mr. Durbrow: Certainly, your Honor, but we wanted to lay this foundation.

1179 (The statement referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 34, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Durbrow: I would like to ask you what the California carriers earn on the actual haul if they would receive a rate per ton per mile as was received by the carriers in the Florida case, determined by the Commission. In the first instance, I would like to ask you, Mr. Butler, the average haul of the California shippers.

Mr. Butler: 2500 miles.

Commissioner Prouty: How much?

Mr. Butler: 2500 miles, from California.

Commissioner Prouty: Do you make that statement as a result of some guess?

Mr. Butler: From the Commission's own last finding in 1168, decided June 9th, 1908, 2500 miles, destinations, as part of the Commission's report.

Commissioner Prouty: You say the Commission has found your haul in the State of California was 2500 miles?

Mr. Butler: Yes, sir.

Commissioner Prouty: The only thing the Commission
1180 knew about it was from testimony that was taken in the rate case. Now, have you made any calculation?

Mr. Butler: As to the average haul?

Commissioner Prouty: Yes.

Mr. Butler: No.

Commissioner Prouty: You must understand that the average haul varies by the location in which these citrus fruits are consumed.

Mr. Butler: Quite true.

Commissioner Prouty: And if the consumption has been increased in the West since this case was heard before.

Mr. Butler: Yes.

Commissioner Prouty: Mr. Chambers then testified, as I remember it, that one-half of the citrus fruits went to Buffalo and Pittsburg and beyond, while at the present time that may not at all be so.

Mr. Butler: This refers to oranges and there will be a further statement which will demonstrate the distribution as about sixty per cent east of Mississippi River.

Mr. Durbrow: Of course, we are comparing these rates with Florida rates.

Commissioner Prouty: I will call your attention to the
1181 fact, the statement of the Commission is only a very general statement and must not be used in this case as between a definite figure. We have not specially any evidence of that and that was referred to incidentally for the purpose of illustration.

Mr. Durbrow: We are glad to be enlightened, but I thought if the Commission laid that down we were safe in accepting it.

Commissioner Prouty: No, you are not safe in accepting anything.

Mr. J. H. Call: We have a total regarding these distances and there is a difference in length of haul of oranges and lemons, a difference some five hundred miles.

Commissioner Prouty: I understand that is your claim. The figures introduced by defendants show that this is referring to oranges.

Mr. Butler: I do not think they are correct in claiming that it is 500 miles.

Mr. Call: It is a little less than that, probably.

Commissioner Prouty: Mr. Norton introduced a statement showing the actual destination of these oranges. Now, I haven't exam-

ined the statement to know what he shows. I believe you
1182 introduced a statement of the car line men showing where these different citrus fruits had gone.

Mr. Durbrow: That is lemons?

Commissioner Prouty: That shows that the lemons were, for 1908 and 1909——

Mr. Durbrow: Of course, we are comparing these Florida rates.

Commissioner Prouty: These figures run with some general statement of the Commission. It should be taken of actual figures.

Mr. Durbrow: Our traffic men felt that about 2500 miles was the average, but it was merely an estimate on our part.

Commissioner Prouty: I am glad the Commission got that estimate right, but it was only an estimate.

Mr. Call: As the Commissioner suggests, it varies from year to year. Under a large crop of lemons, sales remove eastward, and in a small crop draws it back westward, and it varies from the crop of oranges, but it can really be figured at about 2500 miles, as near as you can get to it. That is the way we figured it from our Exchange.

Commissioner Prouty: You claim 2000 miles for lemons and 2500 miles for oranges?

1183 Mr. Call: Yes.

Mr. Durbrow: We are agreed that 2500 miles is the average distance and I will ask Mr. Butler to assume that. Assuming that the average distance is 2500 miles, as the average distance from which California shipments of oranges are hauled—I am only comparing the rate from Florida with that data, and only making the comparison——

Mr. Durbrow: Now, Mr. Butler—What is the average haul on shipments of oranges from Arcadia, Florida, from those different points?

Mr. Butler: It was found by the Commission 1250 miles from Florida.

Mr. Durbrow: Yes. Now, if the railroad rates earned a rate of 1.36 cents per ton per mile as found by the Commission in case 1168, I want you to take that as a basis for the average haul in California of 2500 miles, and tell the Commission, if you please, what California carriers and their eastern connections would earn per ton per mile if they had the same earnings per ton per mile as are received by the Florida roads or the roads that handle the Florida crops?

Commissioner Prouty: Before you answer that question,
1184 didn't the Commission make any finding of the average ton per mile of receipts on these southern roads on the handling of the Florida crop?

Mr. Butler: I do not remember of any average per ton per mile rate, no; but the Commission has established a rate for that average haul.

Mr. Durbrow: They established an average rate for that average haul——

Commissioner Prouty: How do you get at the average haul?

Mr. Durbrow: The Commission found what the average haul was, 1250 miles.

Commissioner Prouty: The average to the west or east—60 per cent went to the east and 40 per cent to the west. Now, the haul up the Ohio River was something, from Jacksonville, something further from Arcadia, but it does not seem to me that the Commission could have found any average haul in that case, because there is no such thing as a blanket haul. If any such statement was made in the opinion it must be misleading, I think.

Mr. J. H. Call: I do not think it is so stated.

Commissioner Prouty: But you may proceed and answer the question, only I called your attention to that.

1185 Mr. Butler: Well, assuming that the average haul was 2500 miles in one case and 1250 in the other, the late decision has established that as a 1259 mile distance, and a rate of 1.41 cents per ton per mile, which applying on the 2500 miles——

Commissioner Prouty: Is that the distance to Chicago?

Mr. Butler: No. That is Indianapolis. Applying that to the 2500 miles to California would make a justified rate on that basis of $1.76 a hundred on oranges from California.

Mr. J. H. Call: The rate to San Pedro of ten cents per ton per mile applying, would be several thousand dollars per ton.

Mr. Butler: The Commission makes that applicable under 1100 miles, Mr. Call.

Mr. Durbrow: As is well known, there is no charge made by these initial lines in California. I would like to introduce these statements in evidence.

(The statement referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 35, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Durbrow: The initial lines in California do not impose
1186 any charge upon the shippers of citrus fruits for assembling the fruit and bringing it to any concentrating point and the rate of $1.15 per hundred applies from all California points in this blanketed territory, but as I understand it, in the Florida shippers' cost the shippers of the Florida oranges are obliged to pay a charge to these basing points, Jacksonville being the principal basing point, and that charge is added to the rate from Jacksonville to destination.

Mr. Butler: That is so.

Mr. Durbrow: Now, I want to ask you if you can, yourself, in a general way, by means of the statement which you have prepared, tell us what the addition would be to the citrus fruit rate from Southern California to these defined territories or destinations if there was added to the California rate of $1.15 per hundred on oranges and on lemons charges based on the assembling charge on the Florida fruit and in the citrus associations case and explain it to us, please.

Mr. Butler: Well, taking a point like Santa Paula, the Commission for that distance has found that an assembling rate of 11 cents per hundred pounds would be reasonable. This is one of the
1187 shipping distances——

Commissioner Prouty: Where is Santa Paula?

Mr. Butler: It is on the San Buennventura Coast Line; it is, I think, where Mr. Teague ships.

Mr. Durbrow: I do not think that the Commission has found any charges reasonable in that case.

Mr. Butler: No. I said in that case the Commission had found for that distance an assembling charge of 11 cents per hundred as justifiable in the Florida case and should any such charge be added it would make it $1.26 a hundred pounds to the next basing point we should have, which would be Los Angeles, and basing it on Colton——

Commissioner Prouty: Is Santa Paula on your main line?

Mr. Durbrow: It is on the coast line, between here and Santa Barbara.

Mr. Butler: There are a number of other points laid off here, simply illustrating the same thing from branch lines and other points basing to Colton and Los Angeles.

Mr. Durbrow: And this statement is designed to show what the through rate would be from Los Angeles and Colton which are the actual basing points related to the territory from which the fruit was assembled if the charge for assembling fruit was added to the
1188 $1.15 rate.

Mr. Butler: Yes, on the Commission basis for said assembling rate.

Mr. Durbrow: And the last two columns show what the aggregate charge would be to the California shippers when they determined what that price would be.

Mr. Butler: Yes, sir.

Mr. Durbrow: I would like to have it introduced in evidence and marked.

(The statement referred to, so offered, was received in evidence, and thereupon marked Defendants' Exhibit 36, received in evidence March 28, 1910, and same is attached hereto.)

Commissioner Prouty: Isn't it a fact that one of the reasons upon which that opinion proceeds in allowing the higher rate from Florida than California is that there is an assembling rate?

Mr. Durbrow: No, sir. I think we have a more reasonable charge for assembling added than Florida has. We may have some further testimony on that that I think will make the showing.

Now, you have prepared a statement of rates fixed by the Commission in their decision in February 8th, 1910, from Florida,
1189 as compared with the present California rate, in which you have used equal distances as a basis for comparison.

Mr. Butler: Based on a per ton per mile comparison.

Mr. Durbrow: Yes. And the last two columns on this statement show the difference in the rate from the southern California territory and the Florida territory compared for equal distances.

Mr. Butler: One is rate per hundred rate and the other is per ton per mile.

Mr. Durbrow: Yes. But the rate for a hundred pounds is compared from Arcadia, Florida, and from Los Angeles to the point which would be equally distanced or approximately distanced.

Mr. Butler: Yes. The distances are shown, 1,417 as compared with 1,409.

Mr. Durbrow: No, you have a statement showing the per ton per mile earnings on citrus fruits based on the net weight and gross weight and the specific system of the Southern Pacific proportion of the amount Seaboard to Chicago and Missouri River territory?

Mr. Butler: Yes.

1190 Mr. Durbrow: And this shows both on oranges and lemons, under the one dollar lemon rate, which was that rate prior to the advance of the $1.15 rate, the present rate, and the orange rate of $1.15, and will you explain that statement in a general way, please?

Mr. Butler: The first division of it is as it is typed shows the lemons at a dollar rate per ton per mile earnings as an average nine hundred and nine-one thousandths of a cent, almost a cent; on the gross weight of the car plus the contents the earning is thirty-nine mills.

Mr. Durbrow: That is, Mr. Butler, if you take the weight of the car added to the weight of the shipment, it is, on the rate of one dollar a hundred here applied and you add a haul for the entire weight of it, you would receive, instead of receiving .991 cents, you would receive .394 cents?

Mr. Butler: That is true.

Mr. Durbrow: And that is merely illustrative?

Mr. Butler: Yes.

Mr. Durbrow: Now, when that shipment moves under ice naturally the gross weight is increased?

Mr. Butler: Yes. Our earnings per ton per mile increase

1191 or decrease on the gross weight. It decreases .315 cents to forty thousandths of a cent per mile per ton, is the lowest and the highest.

Mr. Durbrow: And the same showing applies on the gross per ton per mile rate on the Pacific system *system* where the shipments are destined to these different territories so defined here?

Mr. Butler: Yes.

Mr. Durbrow: Now, Mr. Butler, if you have taken into consideration the weight of the car and the weight of the ice you have also taken into consideration the fact that the carrier is obliged to haul 75 per cent of this equipment empty westbound, which of course increases the cost of the carrier and increases the cost of transporting the shipment in the first instance. Taking all of the cost items into consideration, will you please tell us what it would cost or what the revenue would be, rather, if you added the expense of moving 75 per cent of the cars empty westbound?

Mr. Butler: That first is on Atlantic Seaboard. The net earnings would of course be the same as to the net weight of the load, but the earnings on the gross weight, including 75 per cent or more weight as an empty hauled westbound would have been reduced to

1192 .164 cents, that is, 164 thousandths of a cent, one mill and sixty-four hundredths on lemons at the dollar rate and on oranges .189 cents.

Mr. Durbrow: Will you please read into the record what we would receive per ton per mile on the actual weight of the shipments and

the actual rate per ton per mile earnings, when you take into consideration all of those different elements or factors, on lemons and oranges, if you consider a car moving to Seaboard territory under ice and including 75 per cent of the westbound haul, and including part of the freight charge and refrigerator you find that the gross earnings on the gross weight of lemons on the $1 rate would be 188 thousandths of a cent per ton per mile, on oranges at $1.15 or lemons at $1.15, the earnings would be 210 thousandths of a cent, and destined to Chicago territory the earnings on lemons at the $1 rate would be 242 thousandths of a cent on oranges and lemons; at $1.15 cents 271 thousandths of a cent. That is, on gross weight and to Missouri River, and the earnings at a dollar on lemons would be 280 thousandths of a cent and on oranges and lemons at $1.15, 315 thousandths of a cent.

Commissioner Prouty: You are assuming that seventy-five per cent of the cars come back?

1193 Mr. Butler: We have shown that in the statement.

Commissioner Prouty: I understand you are assuming that as a fact?

Mr. Butler: Yes, sir, that is assumed as a fact.

Mr. Durbrow: I would like to have this introduced in evidence and marked.

(The statement referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 37, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Durbrow: You have a statement of the imports of lemons monthly from 1906 to date and the value of the import as declared by the importers at the port of entry?

Mr. Butler: Yes.

Mr. Durbrow: What is the authority for that statement, please?

Mr. Butler: That comes from the Government's monthly report of commerce and finance, compiled by the Bureau of Statistics.

Mr. Durbrow: One of the statements we have introduced shows that the duty has been increased and notwithstanding that increase, does this statement disclose that notwithstanding that in-

1194 creased cost to the Sicilian or Italian grower, the landing is computed in the United States, in the first instance, that the import has continued to grow?

Mr. Butler: The imports since the tariff duty effective August 5th had continued on about the same basis, or a very little bit of difference, with those maintained for the past four years.

Mr. Durbrow: Does that indicate to your mind, that the supply, that the California grower is unable to supply the demand on lemons consumed in the United States?

Mr. Butler: Most assuredly.

Mr. Durbrow: We would like to introduce this in evidence and have it marked.

(The statement referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 38, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Durbrow: Mr. Butler, you have prepared a statement of citrus fruit claims that have been paid by the Southern Pacific Company from 1906 to 1910, that is, to March 1st, 1910, and it shows a steady decrease. To what extent, please?

1195 Mr. Butler: Why, beginning in 1906 the amount of claims presented by the shippers were 4742. The next year there were 5000 claims presented, of citrus fruits, and the next year they dropped down to 3,000, and the next to 2,800, a steady decrease.

Mr. Durbrow: That is from 1906 to 1909?

Mr. Butler: There was a decrease of one hundred per cent——

Mr. Durbrow: There was a decrease of more than one hundred per cent?

Mr. Butler: More than fifty per cent.

Mr. Durbrow: What does this disclose?

Mr. Butler: When the Pacific Fruit Express took charge of the business in October 1st, 1907, they began to give better service and satisfied shippers to a greater extent, so much so that they did not put in half the claims.

Mr. Durbrow: And it is fair to say that the improved method of handling the fruit has resulted in fewer claims?

Mr. Butler: Undoubtedly that has had a great deal to do with it, the last year or so, anyway.

Mr. Durbrow: I would like to introduce this in evidence and have it marked.

(The statement referred to, so offered, was received in evi-
1196 dence and thereupon marked Defendants' Exhibit No. 39, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Butler: I would like to call your attention to the great reduction in the amount paid in 1910, but they are so few there, some of that might have to be investigated, 49 claims, the first two months, of this year.

Mr. Durbrow: You have a further statement showing the amounts paid for loss and damage to shipments of citrus fruit moving from November 1st, 1907, to October 31st, 1908, indicated according to the character of loss and damage. For instance, breakage, pilferage, outage, decay, and so forth, and this statement itself shows a steady decrease in the amount paid?

Mr. Butler: That statement shows that the payment for improper service was very slight and shows that, for instance, for freezing, there was only $3000 paid during the year, a sum in the nature of showing that the cars do not freeze the oranges, or that freezing does not occur in the cars.

Mr. Durbrow: Decay, the decay is a very small item?

Mr. Butler: The decay is a very small item.

1197 Mr. Durbrow: And this likewise would tend to prove that the service of the carrier and improved method of handling by the shipper has resulted in the preferment and payment of fewer claims?

Mr. Butler: Yes, sir.

Mr. Durbrow: I would like to introduce this in evidence and have it marked.

(The statement referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 40, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Durbrow: Now, you have a statement showing the amount of claims paid for loss and damage to citrus fruits moving during the period November 1st, 1908, to October 31st, 1909. Here is another statement for the latter year showing the decrease in claims.

Mr. Butler: Showing that for the last year——

Mr. Durbrow: This is a similar statement for the years 1908 and '09?

Mr. Butler: Yes.

Mr. Durbrow: It shows a decrease?

Mr. Butler: It shows a decrease even from the year before
1198 in the items.

Mr. Durbrow: Yes.

Mr. Butler: I knew there was something like that.

Mr. Durbrow: I will ask to have it marked in evidence in its order.

(The statement referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 41, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Durbrow: Now, you have a statement showing the dead weight hauled in citrus service 1908 and 1909. I wish you would explain how you arrived at the total weight hauled?

Mr. Butler: Showing in figures appearing in the last statement. I took a number of cars, couple of hundred of ordinary cars in our count and established what we believed to be an average weight of an ordinary car on our westbound and eastbound service, box car, and between those I based an average excess weight of hauling refrigerator cars, which applied to the number of cars actually in that service would give a total excess dead weight, actual, but the carrier, there would have been actually in an ordinary service of that amount of weight and to that has been added the weight of
1199 ice and car and empty percentages, as before.

Mr. Durbrow: I would like to have it introduced and marked in evidence.

(The statement referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 42, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Call: What is the heading of that?

Mr. Butler: Statement showing dead weight haul in citrus service for 1908 and 1909.

Mr. Durbrow: You have a statement in which you compare the box cars of the Southern Pacific Company and the P. F. E. cars, and I would like to have you explain that statement, please?

Mr. Butler: I have shown there the average, at least, not the

average, but the actual dimensions and weights in cubical capacity, the cars of sixty, eighty, and one hundred thousand pounds capacity, and of the very latest type of cars we have had ordered, one hundred thousand pounds steel underframe cars compared with Pacific Fruit Express cars of the same dimensions, that is, 41 feet and 10 inches,
1200 which shows the Pacific Fruit Express car, where it is a great deal longer than the 60,000 pound car, has very little more cubical capacity and its weight is considerable more than the 60,000 pound car. Its cubic feet per thousand capacity is more, I say, because its capacity is less in dimension to its weight and with the weight for a thousand pound capacity is almost double in comparison with the latest type of cars, the 100,000 pound steel underframe. The outside dimensions are equal but the inside dimensions of the refrigerator car is about eighty-three per cent of that inside dimension and the weight is within ten per cent of our biggest car. This cost is 154 per cent of the ordinary car, that is the weight per one hundred thousand pounds is 170 per cent greater than the latest price of steel under-frame car and its cost per thousand pound capacity is some 250 per cent greater than the biggest car.

Mr. Durbrow: I would like to have this statement introduced in evidence and marked.

(The statement referred to, so offered, was received in evidence and marked Defendants' Exhibit No. 43, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Durbrow: I call your attention to a statement of re-
1201 frigerating charges assessed on citrus fruit during the years 1900 and 1903 as shown by certain reports, and particularly with reference to the case of the Consolidated Forwarding Company vs. the S. P. Company, and ask you if this shows a decrease in refrigeration charges on account of the increase in the minimum contained in the car.

Mr. Butler: The rates of 1900 were greater than those in 1903 and the 1903 rates were almost exactly the same as the rate in effect at the present day, as the amount of the rate to Chicago was $62.50 in 1903 and at present the 32,000 pound car, it is $62.50 but the first year, that is, 1903, that rate applies to 27,648 pounds minimum, and there was established a scale proportionate for each hundred pounds beyond that for 32,000 pounds, or rather, in the charge of 1903 they had increased it upon that proportionate basis to cover the shipment of 32,000 pounds. The result shows in the last column of the statement and would be discovered, that is, that the rate would be from seven to ten or twelve dollars a car higher than at the present day rate. In other words, the present day rate has been reduced $12 as far as the effect upon the carload amount in concerned.

1202 Commissioner Prouty: Your rate today is the same for all cars?

Mr. Butler: Our rate years ago was the same for all cars, and 24,595 pound minimum, which is the minimum estimate of the 27 foot car, is about $7.50 less than the others.

Commissioner Prouty: Do you actually use any cars of that size?

Mr. Butler: The Santa Fe has a number of them. The Pacific Fruit Express has not.

Mr. Durbrow: I would like to introduce this in evidence and have it marked.

(The statement referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 44, received in evidence March 28, 1910, and same is attached hereto.)

Mr. Durbrow: You have a statement showing the per car value of refrigerator car in citrus service as compared with the average car value. Please state, in a general way, what that statement discloses?

Mr. Butler: That is an attempt to find out what the car of citrus, that is, a car is worth to the Southern Pacific Company per day in its revenue capacity. Taking the total revenue on a citrus fruit,
1203 both through and local business, and apply to that, or to find out what that amounted to per day, it is $6,043 per day during the year 1908 and 1909, during which time there were in service of the Pacific Fruit Express some 6,600 cars, of which probably 43 per cent was citrus movement, that being the percentage representing the total amount, and you apply that percentage and you will find there were 2,738 cars charged to that movement, or earning $2.20 a day for citrus movement per car. Using the same process exactly in taking the total number of cars, or at least not the total number of cars, the higher number of cars on the Southern Pacific Company's system in any one day the average time during the month and taking the average for the year, and the average car is worth to the Southern Pacific $5.22 per day as against $2.20 per day of citrus fruit cars, refrigerator, showing that the earning is comparatively very much smaller in citrus service.

Mr. Durbrow: I would like to have that statement introduced in evidence and marked.

(The statement referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 45, received in evidence March 28, 1910, and same is attached hereto.)

1204 Mr. Durbrow: You have prepared a statement showing the assessed value on the number of trees of orange land and lemon trees, bearing and non-bearing, you have two statements that I have marked in consecutive order. I will ask you if those statements show in a general way, disclose on their face an increased acreage and increased number of trees.

Mr. Butler: It shows an increase in bearing trees, of 5,000,000 trees since 1895, and of non-bearing trees——

Mr. Durbrow: The statements are designed for comparative purposes?

Mr. Butler: Comparative ones.

Mr. Durbrow: I want to state, we do not place any value on the figures themselves except showing the growth of the industry determined through the medium of the assessor's figures.

Mr. Call: You say you got these figures from the records?

Mr. Butler: From the records of the State Board of Equalization, also from other reports of earlier date.

Mr. Durbrow: Then you have a further statement showing from 1884 to 1908 the acres assessed and the value of the real estate other than city and town and the value of all real estate, and the
1205 value of the improvements on the lands and the improvements on the lands in the orange-growing counties. I understand that this statement is of value only by comparison to show the growth of the wealth of the territories in which these oranges and lemons are grown extensively.

Mr. Butler: It is the Southern California orange and lemon counties and these, of course, are worth more than the other.

Mr. Call: Have you segregated there the fruit from the tourist's money?

Mr. Butler: I think we got a load of fruit.

Mr. Durbrow: I would like to have them introduced in evidence.

(The last three statements referred to, so offered, were received in evidence and thereupon marked respectively Defendants' Exhibits Nos. 46-1 46-2; 47-1 47-2; 48-1 48-2 48-3, received in evidence March 28, 1910, and same are attached hereto.)

Mr. Durbrow: The last statement you have to introduce, Mr. Butler, shows the amount of oranges and lemons shipped by the Southern Pacific Company from California through the different gateways to trans-continental groups and groups, being shown parallel?

1206 Mr. Butler: As far as the Missouri River.

Mr. Durbrow: Yes, we would like to introduce that as our last exhibit.

(The statement referred to, so offered, was received in evidence and thereupon marked Defendants' Exhibit No. 49, received in evidence March 28, 1910, and the same is attached hereto.)

Mr. Butler: I would like to remark, in that connection, that the distribution via Ogden and El Paso is shown there to a certain extent, this being a Southern Pacific Company statement, the Salt Lake gateway is included in the other gateway, and the El Paso and Ogden, probably 46 and 31 per cent to the territories easterly.

Mr. Durbrow: That is all the evidence I will introduce through Mr. Butler.

Cross-examination:

Mr. Call: Let us get at your duties towards the Southern Pacific Mr. Butler.

Mr. Butler: Very well. What do you want to know?

Mr. Call: I want to know what you do, what your official position is, and what your work is?

Mr. Butler: I have been in charge of various branches of
1207 tariff statistics for a number of years.

Mr. Call: Traffic statistics?

Mr. Butler: Traffic statistics, dealing with the Interstate Com-

merce Commission on freight, branches of the work, preparing statistics of movement and rates.

Mr. Call: You study rates, too?

Mr. Butler: To a certain extent where it is necessary for some particular purpose.

Mr. Call: But you have nothing to do with the practical operation of the road or any of its departments?

Mr. Butler: I have never run an engine.

Mr. Call: I mean, do you have anything to do with the practical operation of any department? Do you manage any department or have anything to do with any department, and the actual operation of the road?

Mr. Butler: What do you mean by "actual operation?"

Mr. Call: I mean either in the field or moving the traffic or making rates.

Mr. Butler: I never made any rates, and had nothing to do with the movement of traffic.

Mr. Call: Had nothing to do with making rates or the movement of traffic?

1208 Mr. Butler: No.

Mr. Call: So that your position is a theoretical one?

Mr. Butler: No, it is not a theoretical one. They pay me something for it.

Mr. Call: I didn't mean in that regard that you do not donate your services, but I mean your compilations are made from the various data you gather from various sources?

Mr. Butler: Not by any means. The data is not collected from theoretical sources, from actualities and carloads, movements, and date of movements, and where it is going and by its routing and diversion. That is not a theory.

Mr. Call: I noticed you were getting your data from magazines.

Mr. Butler: Yes, we get some of this as early as 1874 from the Southern California Fruit Exchange companies.

Mr. Durbrow: They are not very accurate?

Mr. Butler: No, they are not very accurate. I got some of those figures lately.

Mr. Call: Wasn't that before we were born?

Mr. Butler: I expect so.

Mr. Call: And magazines?

Mr. Butler: No.

1209 Mr. Call: What you might call ante-natal publications?

Mr. Butler: No, sir, I don't think there was any magazine mentioned.

Mr. Call: Now, where did you get your data for this, for instance, for the Sicilian lemon production?

Mr. Butler: From the government figures.

Mr. Call: Where did you get your value of production?

Mr. Butler: From the government figures, United States Commerce and Labor statistics.

Mr. Call: Where is that point of which they give the value?

Mr. Butler: They give the import value.

Mr. Call: Import value where?
Mr. Butler: That is at the port.
Mr. Call: At the ports of entry?
Mr. Butler: Yes, the port of entry, of course.
Mr. Call: I notice that the reports we have are quire different?
Mr. Butler: Yes. Did you find the data separate?
Mr. Call: Will you give me the specific reference?
Mr. Butler: The Commerce and Finance of the United States.
Mr. Call: Can you cite me a specific instance?

Mr. Butler: Yes, I can cite you a specific instance if you
1210 will refer to page 4035, tariff schedule G which you would be very much interested in; you will find an affidavit of three or four importers of lemons for a number of years, showing the average figures paid, what lemons cost them and different points they bought them, what the rate was, what their duties were and other actual costs of import. That is not theoretical. That is from actual figures. Some millions of boxes last year, and I think some several hundred thousand the first year.

Mr. Call: That is what — wondering, if you didn't take figures of importers.
Mr. Butler: I took them from the Government figures.
Mr. Call: What I want to get at is where you got it from the Government?
Mr. Butler: The Government commerce, and from the Government Commerce and Finance.
Mr. Call: I would like to see that book where you got that from?
Mr. J. H. Call: I want to call attention *that* that statistical report of another important matter which was objected to by counsel on the other side and they have introduced from the same department other records.

1211 Commissioner Prouty: I have understood that the records showing the importations of lemons was a Government record and kept under Government requirements and consequently admissible anywhere, but the document which you undertook to introduce and which was finally admitted——
Mr. J. H. Call: I thought it was not admitted.
Commissioner Prouty: Yes, it was admitted. It was admitted.
Mr. Call: What I was trying to get at is the specific document.
Mr. Butler: It will be found—if you ask them for it they will send you one every month.
Mr. Call: We will investigate that. This record shows a valuation of about two cents a pound.
Mr. Butler: Yes. It is shown for two years. It shows it varies.
Mr. Call: But I was wondering whether that could be true because I know they sell at auction for less than that most of the time.
Mr. Butler: That shows the average value of every year.
Mr. Call: I was wondering if you had the correct point at which they gave the value, whether it was the value after the duty was paid or before.

1212 Mr. Butler: Yes. I am certain on that point.
Mr. Call: You are certain of that point?

Mr. Butler: Yes, sir.

Mr. Call: You are just as sure of that proposition as to the price we would be able to get for lemons theoretically?

Mr. Butler: I have not said what you are able to get. I don't know what you are able to get.

Mr. Call: But you give us the advantage there of so much?

Mr. Butler: I don't say you will be able to get that much. If there is no one to buy it you can ship all the lemons and no one to buy them you cannot sell them.

Mr. Call: Is that really the money you were going to assure us we would get and what you thought they would buy it for at that price?

Mr. Butler: If you could ship them and find buyers, but if there is nobody buying lemons——

Mr. Call: Suppose they would not be buying for that price, what would you do then?

Mr. Butler: If you didn't have a lemon that I could sell with seventy cents advantage I would go out of the business. If I couldn't ship a lemon with seventy cents a box advantage I would quit.

1213 Mr. Call: Or maybe you might appeal to the railroads or Congress?

Mr. Butler: Yes, or the Interstate Commerce Commission. There are other methods.

Mr. Call: You might appeal perhaps to Congress or the railroads to look it up?

Mr. Butler: Yes.

Mr. Call: And be able to sell something else?

Mr. Butler: Possibly.

Mr. Call: But what you are giving here as a basis of advantage we have, is what you think, what you think it ought to be?

Mr. Butler: No. What the rate says you should be able to do if you are onto your business.

Commissioner Lane: Have you included there the refrigeration?

Mr. Butler: No, sir. Lemons do not have refrigeration, except for one-eighth of the shipment.

Commissioner Lane: You are taking a flat dollar rate?

Mr. Butler: Yes, sir; I am taking a flat dollar rate.

Commissioner Prouty: You have assumed that lemons cost the importer in New York $3.14 a box?

Mr. Butler: Yes.

1214 Commissioner Prouty: And your calculations are based on that?

Mr. Butler: Based on the Government value and that importer's value.

Commissioner Prouty: You do not assume in your cost to the importer of $3.14 a box, you do not assume that they will sell them at $1.50 a box?

Mr. Butler: No. If they do that I think they could not do business.

Commissioner Prouty: I have a statement before me which shows

that Florida lemons were selling all through the summer in New York on the basis of between $1.50 and $2.50 a box.

Mr. Butler: Florida lemons?

Commissioner Prouty: I mean California lemons.

Mr. Butler: That probably relates to f. o. b. California.

Commissioner Prouty: No, I have data of a price of boxes that sold f. o. b. California at thirty-nine to fifty cents a box. That is what this statement says.

Mr. Butler: Who made it?

Commissioner Prouty: The fruit growers furnished this as an actual account of the sales made here; now, June, 1908, they didn't sell any lemons at all, but in 1909 they sold some at thirty-nine cents a box f. o. b. California.

1215 Mr. Butler: They would lose money very hard.

Commissioner Prouty: They sold in July and in August, 1909, they sold for fifty cents a box. And the average would be less than $2 a box. Why do you suppose these people would sell the lemons there for $2 a box if it cost the importer $3.14 a box to get his lemons in there?

Mr. Butler: If it cost them $1.40 to produce it I do not see why they would ship them at all. I would knock them off the tree if I had to sell them at fifty cents a box on the same basis.

Mr. Call: You say you took that statement made before the ways and means committee as a basis of producing a box of lemons in California?

Mr. Butler: That has compared to a cent with that other statement of value.

Mr. Call: What other statement of value?

Mr. Butler: From the Government report of commerce and value, it shows a value of $3.14 a box, and if you take the importer's statement of 1,000,000 boxes imported there, their affidavit, rather, you will find exactly the same figure.

1216 Mr. Call: You know the fellows down there, these importers?

Mr. Butler: Not very well.

Mr. Call: Do you know Siata?

Mr. Butler: I know he gave a most interesting affidavit before the committee.

Mr. Call: Do you know Corisono?

Mr. Butler: No, I don't remember him.

Mr. Call: Lagariti?

Mr. Butler: No, do you?

Mr. Call: I saw him down there. I don't know how far you want to make up their statement.

Mr. Butler: You mean from appearances?

Mr. Call: They did not swear to them.

Mr. Butler: They gave an affidavit to them.

Mr. Call: Some of them did and some of them did not?

Mr. Butler: They swore to this affidavit.

Mr. Call: Did you notice that that statement of cost producing

California lemons of $1.43 was not given as an average at all, was only given as the result of a few of the best groves in California?

Mr. Butler: I would like to look at it. Will you let me see the brief of the state of facts.

1217 Mr. Call: Yes. Let me have that brief of facts. I think that is what Mr. Chambers said, that he had taken three or four or five of the best groves in California, and that was a statement below the actual average.

Commissioner Prouty: Do not spend time to look at it now.

Mr. Call: Very well.

I notice that you have figures there as to the duty on foreign lemons.

Mr. Butler: Yes.

Mr. Call: And that you are computing it there on the estimated full weight of the box?

Mr. Butler: Yes, including the box and the lemons.

Mr. Call: Do you know what the government actually uses in figuring the duty?

Mr. Butler: I presume the actual weight of the fruit.

Mr. Call: Do you know anything about it?

Mr. Butler: No, but I have no reason to think that the law is not being complied with.

Mr. Call: Do you know what is the weight of the lemons in the box?

1218 Mr. Butler: Well, I figured it as though there were eighty-four pounds in a box. That is the weight of the lemons in a California box.

Mr. Call: Didn't you divide the weight by the amount of money that the Government received and find out upon what amount they had charged per pound?

Mr. Butler: No——

Mr. Call: Why didn't you divide?

Mr. Butler: I did.

Mr. Call: And find out how many lemons there were in a box?

Mr. Butler: I did.

Mr. Call: If you were trying to find out the exact fact, why didn't you divide it and find out before you made a report showing this exorbitant sum paid for import, and find out the amount that was actually paid for a box?

Mr. Butler: The average duty as stated here is based on the old basis; that was a cent per pound.

Mr. Call: I would say for your information as a matter of fact that the highest amount of lemons in a box that the government has ever collected duty on is seventy-six pounds, and sometimes runs as low as sixty-eight.

Mr. Butler: Those boxes would not be a fair comparison.

Mr. Call: Don't you know that about fourteen pounds of the total weight of the box is lumber?

1219 Commissioner Prouty: I don't think it is worth while spending any more time on that.

Mr. Call: Have you figured here as to what the increase in cost to your company was for carrying the extra weight in the car?
Mr. Butler: No.
Mr. Call: Have you figured here to find out as to how much more you would have received if you had got paid for all of it——
Mr. Butler: No.
Mr. Call: —on the revenue basis?
Mr. Butler: They are earned on the gross weight basis.
Mr. Call: Do your figures there show how much more you would have earned if you had got paid for all that gross weight?
Mr. Butler: No.
Mr. Call: You figure the amount of dead weight carried in the car?
Mr. Butler: Amount of dead weight shown, yes.
Mr. Call: You are figuring your earnings on your gross weight?
Mr. Butler: Figure the earnings on the net and tare. Figure three different ways.
1220 Mr. Call: Figure what you get net on your gross ton per mile?
Mr. Butler: Yes.
Mr. Call: Did you make any figures here as to how much more it cost you to carry that excess?
Mr. Butler: Well, if you carry forty thousand pounds dead weight, it costs you as much as it does forty thousand pounds live freight.
Mr. Call: Suppose you had carried a couple of tons extra in those cars, tare, in the big cars?
Mr. Butler: You carry a good deal more than that in the latest car—I don't remember how many tons it was.
Mr. Call: I think it was four?
Mr. Butler: I don't remember.
Mr. Call: Our four thousand pounds. Well, for illustration, did you figure upon what it would cost you to carry that?
Mr. Butler: No.
Mr. Call: Why didn't you figure on that?
Mr. Butler: I haven't the slightest idea how to arrive at it.
Mr. Call: How long have you been a statistician?
1221 Mr. Butler: Six or eight years.
Mr. Call: You didn't figure the cost?
Mr. Butler: I didn't figure how much it cost to take two tons from here to New York.
Mr. Call: The company gets some sort of a price on that, don't they?
Mr. Butler: I don't know.
Mr. Call: They didn't give that to you?
Mr. Butler: I didn't get that.
Mr. Call: What does it cost you to carry a loaded car a mile?
Mr. Butler: Upon what basis?
Mr. Call: Average?
Mr. Butler: What division
Mr. Call: Average.
Mr. Butler: Take the annual report, take the gross ton miles, and

divide it into the gross expense and find out just exactly what it costs per ton per mile.

Mr. Call: You have thrown into the gross expenses all the passenger expenses?

Mr. Butler: I don't know how to apportion it.

Mr. Call: You have some sort of a test or schedule for find-
1222 ing out the cost?

Mr. Butler: It has been apportioned in various ways.

Mr. Call: Well, now, for instance, you can figure the cost of moving a locomotive a mile, can't you?

Mr. Butler: Yes.

Mr. Call: How does that run on your road?

Mr. Butler: I don't really know.

Mr. Call: Don't you get that in your figures?

Mr. Butler: I can get it.

Mr. Call: Thirty-five cents, isn't it?

Mr. Butler: When I go to look that up, I can find it, I presume.

Mr. Call: What proportion does the locomotive expense bear to the total expense of moving a freight train?

Mr. Butler: I don't know.

Mr. Call: How do you get at it to say what this dead weight costs you?

Mr. Butler: I haven't said that. I don't know what it costs the Southern Pacific Company.

Mr. Call: You don't know how much it ought really to add to the rate?

Mr. Butler: No.

1223 Mr. Call: It don't add any more to the rate than the cost of moving it?

Mr. Butler: That is a question for the people that make the rate.

Mr. Call: Can you say why you should add any more to the rate than the cost of moving that dead weight?

Mr. Butler: I have not looked at it with that idea in view.

Mr. Call: The way you would figure it it would be on the basis that if you can get paid for the dead weight that would bring you so much more money?

Mr. Butler: No, we get paid on the basis of all the dead weight we haul. Isn't that true?

Mr. Call: That depends on the way you figure it, doesn't it? You could apportion your earnings over your dead weight, or apportion your earnings over your revenue freight against your actual cost of moving your dead freight if you wanted to?

Mr. Butler: It would result figure for figure just the way I did it.

Mr. Call: It would make some difference the way you fix the rate?

Mr. Butler: None at all.

Commissioner Prouty: The proposition is is this citrus
1224 fruit traffic profitable or unprofitable.

Mr. Butler: I haven't expressed any idea about that.

Commissioner Prouty: I was going to ask you if you had extended your computations far enough to know what the profit was on that?

Mr. Butler: No, I have not.

Mr. Call: Have you compared your earnings on citrus fruit, gross weight, with the earnings on other commodities moving from this Coast?

Mr. Butler: I haven't introduced anything of that kind, no.

Mr. Call: Do you have any idea, or do you know, based on the basis you have figured, that is, your revenue per gross ton, how would that revenue per gross ton be on beans, say?

Mr. Butler: The citrus revenue is the same practically to what it would be on beans.

Mr. Call: I asked you if you had the figures.

Mr. Butler: I can give you that. I can get it.

Mr. Call: I have a magazine article here I don't know how——

Mr. Butler: I never used one unverified in my life——

1225 Mr. Call: Then I won't. But you have not made figures showing the revenue per gross ton per mile on commodities?

Mr. Butler: You can very easily figure it in five minutes. Twenty-five hundred miles to Chicago, or any point you want, take forty thousand poinds; they will load probably fifty thousand pounds in a car——

Mr. Call: What do they load?

Mr. Butler: Well, they do load about fifty thousand pounds. I am giving this roughly, but the minimum is forty thousand, and they load better than that, 50,000, eighty-five, divide by 2500 and you have the per ton mile revenue, which is very low. But the per car revenue would be very high on our citrus movement.

Mr. Call: That bean rate you consider about the best rate you have, don't you?

Mr. Butler: No.

Mr. Call: I have heard you talking about beans ever since you commenced to talk, and I was wondering if beans was your best rate, the one you were bragging about.

Mr. Butler: I haven't mentioned beans before until you asked me the question about it.

Mr. Call: It is in the answers here filed.

1226 Mr. Durbrow: I don't think it is very material to determine who has been talking about beans. We will admit that somebody has been talking about beans. We will stipulate to that extent.

Mr. Call: Have you compared your gross earnings, your earnings per gross ton on citrus fruit as compared with deciduous fruit?

Mr. Butler: No, I have made no such comparison.

Mr. Call: On deciduous fruit, it is all under ice, isn't it?

Mr. Butler: I imagine a very good portion of it is. I don't know. What proportion I can't say.

Mr. Call: You think that could be taken into consideration?

Mr. Butler: Most assuredly, if it moves under ice it would have to be taken into consideration.

Mr. Call: You include the carrying of the ice?

Mr. Butler: Why, it would certainly be one of the factors in the movement of the fruit.

Mr. Call: I notice that you figure your earnings per car at $2.20 a day.

Mr. Butler: That is per car of citrus fruit.

1227 Mr. Call: Yes. How do you get that?

Mr. Butler: I explained the process, and the statement explains it. That is, working from the total revenue backwards.

Mr. Call: You heard the statement here that Mr. Mortensen made here with regard to the number of trips those cars make?

Mr. Butler: Don't make any difference how many trips they made.

Mr. Call: Don't make any difference?

Mr. Butler: No. They certainly must make more than one trip. Each trip being a revenue producer would all go into the total revenue.

Mr. Call: I know, but the more trips they would make the more they would earn per day, wouldn't they?

Mr. Butler: Not necessarily.

Mr. Call: They would not earn as much laying idle as they would on the road, would they?

Mr. Butler: No, certainly not.

Mr. Call: The more trips they make during the course of a year the more they would earn per day?

1228 Mr. Butler: If you will say the more trips a car made between here and Chicago the more it would be per day, yes.

Mr. Call: Suppose one of these cars carried, as Mr. Mortensen said, about seven loads of fruit to some place in the east.

Mr. Butler: Some place?

Mr. Call: It don't make any difference where, seven loads during the course of a year, and you get over $300 a load for it, there is about $2200.

Mr. Butler: That would be about right.

Mr. Call: Three hundred and sixty-five days in the year; now, you divide; how can you reduce that to $2.20 a day?

Mr. Butler: Because the Southern Pacific don't get all that revenue.

Mr. Call: And you reduce in proportion——

Mr. Butler: That is it.

Mr. Call: —for the time that the cars are on their line so that they get their proportion of——

Mr. Butler: That is it.

Mr. Call: —whatever the cars earn?

Mr. Butler: That is it.

Mr. Call: How can you figure that out that that car only earns $2.20 a day when it earns about $2200 a year and only 365

1229 days in the year? That is over $6 a day that it earns, besides what it earns on foreign roads for ice and mileage?

Mr. Butler: It doesn't earn that for the Southern Pacific.

Mr. Call: I am not talking about the Southern Pacific——

Mr. Butler: I showed what the revenue was to the Southern Pacific on all citrus business.

Mr. Call: I know, but you only take the portion that the Southern Pacific earns on those cars and divide it over all the cars?
Mr. Butler: Yes, I divided it over all the cars.
Mr. Call: Just as though they were busy for you all the time?
Mr. Butler: Yes.
Mr. Call: Do you consider that as a fair way to figure what that car earns?
Mr. Butler: I do. That is the number of cars we use, divided by the revenue we get.
Commissoner Prouty: Have you any other witness, Mr. Durbrow?
Mr. Durbrow: I don't think I will introduce any other
1230 witnesses, your Honor.
Commissioner Prouty: How many witnesses have you, Mr. Norton?
Mr. Norton: I have Mr. Peabody, and I was going to put just three or four questions to General Manager Wells. Perhaps I won't put him on.
Commissioner Prouty: Halsted, how many witnesses have you?
Mr. Halsted: I don't think I shall have any. I think I will file some tables, or statements.

(Whereupon an adjournment was taken until Tuesday morning, March 29, 1910, at 9 o'clock.)

1231 MARCH 29, 1910—Nine o'clock a. m.

Commissioner Prouty: Mr. Durbrow, in the classified statement of the damages paid by your company, yesterday, there is an item which you term cuttage. What does that mean?
Mr. Butler: That is the loss from the package by reason of some unknown cause. Not pilferage, but it is loss without our being able to determine whether it is from sealing, or simply natural shortage.
Commissioner Prouty: I notice you also have an item for pilferage.
Mr. Butler: Yes, that is from theft.
Commissioner Prouty: And another item, breakage.
Mr. Butler: Yes.
Commissioner Prouty: What is meant by that?
Mr. Butler: Where the boxes are smashed up. Cuttage is a loss from the package by reason of some other cause than pilferage.
Commissioner Prouty: What is the size of a box of lemons compared with a box of oranges?
Mr. Call: It is a little different shaped box——
Mr. Durbrow: The tariff provides exactly the size of the box.
Commissioner Prouty: How many boxes of lemons can be
1232 loaded into a car? How are they loaded?
Mr. Call: They are loaded the same as oranges, except that, being a little larger box, they do not take as many tiers.
Commissioner Prouty: They are set on end?
Mr. Call: Yes, just the same as oranges.
Commissioner Prouty: Loaded six tiers wide and two high, ordinarily?
Mr. Call: Yes.

Commissioner Prouty: But the boxes are a little thicker?

Mr. Butler: Take a refrigerator dispatch car, it will hold 384 boxes of oranges, and will hold 324 boxes of lemons loaded in the same way.

Commissioner Prouty: How does the weight of the orange compare with the weight of the lemon, per cubic foot?

Mr. Call: The lemon will weigh a little more. The lemon-box is estimated at 84 pounds, and the orange at 72, but as a matter of fact they are both a little more.

Commissioner Prouty: Could lemons be loaded into a car seven tiers wide?

Mr. Call: Well, I don't think we ever have.

Mr. Durbrow: I can give you the dimensions of the boxes——

Commissioner Prouty: I can get that in the tariff. Never
1233 mind about that.

Mr. Call: I don't know whether they can under the pre-cooling system. We never have applied pre-cooling to lemons. We have always regarded it as dangerous to load lemons in any other way than six wide and two high.

Commissioner Prouty: You referred in your statement, Mr. Butler, to the fact that there were other gateways besides El Paso and Ogden and Portland.

Mr. Butler: Yes, the Salt Lake, and Santa Fe, our connection at Bakersfield; at Deming with the Santa Fe, or with the Salt Lake at Los Angeles or Colton.

Commissioner Prouty: Proceed.

JAMES PEABODY was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Norton: Mr. Peabody, you are Statistician of the Atchison, Topeka & Santa Fe System?

Mr. Peabody: Yes, for their entire system.

Mr. Norton: I believe the Commission are acquainted with Mr. Peabody, without any further questions on that line.

Commissioner Prouty: Oh, yes.

1234 Mr. Norton: Mr. Peabody, have you made a comparison of the California orange and lemon rate with the Florida orange and lemon rate to certain points, from California; prepared a table showing the rate under the last decision of the Commission respecting the Florida citrus fruit rate?

Mr. Peabody: I have made such a statement and have it in three forms. Exhibit No. 1, in this lot of exhibits, is such a showing on the basis of the rates that are at present in force; not upon the basis of the order of the Commission. That shows a comparison between the Florida orange and the California orange from the base points in Florida to the various destinations shown in the exhibit, Kansas City, Chicago, St. Louis, and so forth, showing the rate per ton mile, rate per hundred pounds, respective distances, both on oranges and lemons for each line, for each class of oranges, showing that the rate

per ton mile on the Florida orange is higher to all points than either on oranges or lemons in California.

Mr. Norton: That was before the recent decision?

Mr. Peabody: That was before the recent decision.

Mr. Norton: That was before the decision in case 1168, Florida Fruit Growers & Vegetable Shippers Protective Association against the railroad.

Mr. Norton: What is table No. 2?

1235 Mr. Peabody: No. 2 is the same kind of an illustration on the basis of the present rates from California, compared with the rates ordered by the Commission.

Mr. Norton: In the case I have just mentioned?

Mr. Peabody: Yes.

Mr. Norton: 17 I. C. C. R. 552.

Mr. Peabody: Exhibit No. 2 being on lemons, exhibit No. 2 on oranges. In these exhibits I have taken what I considered an average point of origin, which is some twenty to thirty miles north of Arcadia which was mentioned as a representative point.

Mr. Norton: In exhibit No. 1 you took Jacksonville as the assembling point?

Mr. Peabody: Yes. Exhibit 2 is the showing from the point of origin. I have taken the town of Bartow, which is a little north of Arcadia, as being the center of the production, which I took some pains to find out. I united the local rate, assembling rate, and the rate from High Springs, which was the base point from which the shipments at Bartow are forwarded. You will find in one of the columns, Bartow to High Springs—— The basis for the assembly rate, which added to the base rate makes the figure shown in exhibit No. 2 on lemons, showing that the rate on Florida

1236 lemons is very much higher to the carrier as a revenue producer than the California product.

Mr. Norton: That is on the basis of per ton per mile revenue?

Mr. Peabody: Yes. The basis, for instance, to Chicago for the California lemon being 9.02 mills, whereas to Chicago on the Florida lemon is 1.688 cents, almost double; take Indianapolis, and the revenue is more than double; with a great many of the points is more than double revenue per ton per mile on the lemon.

Mr. Norton: Have you a similar showing on the lemons?

Commissioner Prouty: The distances here are nearly twice as great?

Mr. Peabody: The distances are greater, although the revenue is on the basis of ton mile, and takes into account the distance.

Commissioner Prouty: You don't compare your revenue with the transportation or to the Salt Lake?

Mr. Peabody: I use the Santa Fe only. We take the Santa Fe basis. Exhibit No. 3 is the same thing on oranges, showing that on Chicago shipment the revenue per ton mile for the California product is 1.037 cents, whereas on the Florida product it is 1.688, the same as it was on lemons.

Commissioner Prouty: The mileage used in Exhibit No. 3 is the mileage from where?

1237 Mr. Peabody: The mileage from Los Angeles.

Commissioner Prouty: And the mileage from Florida?

Mr. Peabody: That is the short line mileage from Florida.

Commissioner Prouty: What point in Florida?

Mr. Peabody: Mileage from Florida takes it to the point of origin.

Commissioner Prouty: You state the mileage in the case of Chicago is 1081. That is the distance from High Springs?

Mr. Peabody: Yes.

Commissioner Prouty: And you add to that distance——

Mr. Peabody: —253 miles to Barstow in computing the ton mile rate, yes, sir.

Mr. Norton: Is that all you have to say about in your exhibit B?

Mr. Peabody: The exhibit shows that revenue per ton mile, taking it from the point of origin, is very much heavier for the Florida lines than the western lines.

Mr. Norton: Have you prepared a statement showing the Santa Fe proportion of the through rate on oranges and lemons when destined to Buffalo, New York, from Los Angeles, based on tariff, or not?

Mr. Peabody: I have prepared such a statement, marked Exhibit No. 4, in which the rate is shown to Buffalo, New York, and
1238 the Santa Fe proportion is shown of that traffic, and the proportion of the lines east.

Mr. Norton: You show the earnings per ton mile of the eastern connections?

Mr. Peabody: The earnings per ton mile are shown as well as the rate, showing that although we earn on the Buffalo orange .886 cents, the eastern line earns considerably less, or .643 per ton mile. On the lemons we earn .770 and the eastern line only earns .561 cents per ton mile. On the New York orange and lemon we earn still less, and the eastern line also earns less. That was prepared in order to overcome the statement—support the contention of the eastern lines in regard to the unremunerative rate that they were receiving and their objections to continuing the rate.

Mr. Norton: Do you make in this exhibit or elsewhere any showings of what the earnings of the eastern connections would be on Florida fruit westbound?

Mr. Peabody: I do not.

Mr. Norton: That would have been a good thing to put in here. Have you prepared a table showing the ratio of the freight rate to the value, to Chicago, of certain transcontinental commodities?

Mr. Peabody: I have such a table, although I am not cer-
1239 tain as to the values which I have used. They were obtained from the best information I could get, however.

Mr. Norton: Intended to be illustrative generally?

Mr. Peabody: They are simply illustrative, and there is no intention of saying that that is the exact value of these commodities, although it is as near as I could get it, and the best information I could get.

Mr. Norton: For example, the price of $3.12 per box of oranges,

Chicago, that was ascertained from actual inquiry in the markets there?

Mr. Peabody: Our commercial agent made an investigation there and reported that to me as the average price for oranges in Chicago.

Mr. Norton: $2.75 as the price for lemons?

Mr. Peabody: Yes.

Mr. Norton: I was going to ask you to state when he made that inquiry.

Mr. Peabody: Along early in March of this year. You will notice the per cent rate and value on the oranges is less than anything except redwood lumber, and on lemons is less than anything except grapes, tomatoes, and canned peaches.

Mr. Norton: Why did you select these particular commodities?

1240 Mr. Peabody: Because they were the commodities being shipped from California——

Mr. Norton: Transcontinental commodities?

Mr. Peabody: Yes, transcontinental commodities, and there are not a very great quantity of different commodities being shipped that way.

Mr. Norton: As I understand it, that means that the value—what does that 26.6 per cent in the top column mean?

Mr. Peabody: That is the per cent of the rate per hundred pounds to the value per hundred pounds. My endeavor was to get the low rate commodities. I could have selected commodities very much higher. For instance, walnuts are very much more valuable, and if I had selected them the proportion would have been very much more marked. But I simply was trying to get some low rate articles, such as asphalt, redwood lumber, canned peaches, everything of that sort.

Mr. Norton: Passing from exhibit 5, have you prepared a statement showing the revenue per ton mile on citrus fruits compared with revenue per ton mile on all freight of the A., T. & S. F.?

Mr. Peabody: Exhibit 6 is such a showing, showing the revenue per ton mile of citrus fruit on all fruit from the year 1905
1241 to the year 1909, inclusive; showing that the earnings on citrus fruit constantly decrease, whereas the earnings on all freight decrease from 1905 to '6, a slight decrease, one-thousandth of a mill, practically the same, from 1906 to '7, increase from 1907 to '8, and a larger increase from 1908-9, whereas the citrus fruit steadily declined from one cent in 1905, 1.017, to .921 in 1909.

Commissioner Prouty: How do you account for the increase in carriage in 1909 compared with 1908?

Mr. Peabody: The larger proportion of the movement going east of Chicago.

Commissioner Prouty: You have shown your earnings.

Mr. Peabody: These are our earnings. These figures deal entirely with the Santa Fe revenue, not with the general proposition. I attribute that to the constantly increasing movement to the east.

Commissioner Prouty: Well now, that means east of Chicago?

Mr. Peabody: Yes, there is more going off of our lines, and so shrinks our proportion of the rate.

Commissioner Prouty: We would naturally expect that the consumption of oranges would increase more east of Chicago than at Chicago and points east. Have you some table there that
1242 shows the actual distribution of these oranges?

Mr. Call: If your Honors please, I think it is probably a fact, in regard to recent years, to some extent, this was the fact, that the business—I think about sixty to sixty five per cent of the fruit originates on the Santa Fe lines, and they requested the shippers to give part of this business to the Salt Lake road, they did not want so much, and the shippers in compliance with that request diverted to the middle west territory within the last year or two a large amount of the fruit, which left the Santa Fe haul longer in proportion.

Mr. Norton: What year do you refer to, your Honor?

Commissioner Prouty: 1909. Per ton mile earnings fell from .942 to .921, although the rates remain the same.

Mr. Norton: Anything further in that exhibit?

Mr. Peabody: I think not. The per cent decrease is shown.

Mr. Norton: Have you prepared a table showing the movement of citrus fruit by months for the year ending June 30, 1909?

Mr. Peabody: I have such a table shown in exhibit 7.

Mr. Norton: On the Atchison, Topeka & Santa Fe System?

Mr. Peabody: This is for the year ending June 30, 1909, and shows the movement by months, showing the last six months of the calendar year being very much lighter than the first six months of the calendar year; and the remarkable thing is that the
1243 last four months, March, April, May, June, embrace over sixty five per cent of the total year's business.

Mr. Norton: This is claimed to show, in answer to your Honor's questions the other day, the difficulty in assembling and having ready equipment to meet varying and suddenly changing conditions.

Commissioner Prouty: I asked you to furnish a table of this same kind for half a dozen years for the express purpose of showing whether conditions do suddenly vary, or whether you can depend with reasonable certainty on the fact that your shipments would be just about a certain amount in March, April, May and June. Are you ever required, for example, to furnish 2000 cars in December or November or January? Do you not know to an absolute certainty that the heavier movements begin in February and March, and run through April, May and June?

Mr. Norton: Yes. We know that to a certain extent, but it is a question whether we will have a thousand cars to draw on, or five hundred, and I think we will show you by Mr. Barnwell's detailed statement, which will be filed, that we have to keep on hand a very large supply in order to meet the sudden changes in demand for equipment, in the heavy months, and even in the light months.

1244 Mr. Norton: Any further comment upon your exhibit?

Mr. Peabody: Nothing.

Mr. Call: Perhaps it would be useful for us to furnish a table, which we can do very readily, of the daily movement. Our understanding is that the daily movement beginning in November, grad-

ally increases, commencing with fifty cars along in the fall, and running up to two hundred in April; that taking all the lines together it is a very uniform increase year by year; that they have learned about what the consumption is, and aim to give about what the people want. In Tulare County the shipments are earlier than in Southern California. That is just north of Tehachapi. They produce an early fruit, and it moves in quite large quantities beginning in November. The Santa Fe don't get that, I guess, so that the Santa Fe's movement would be a little different from the Southern Pacific.

Commissioner Prouty: I suppose the movement depends, to a very great extent, on the state of the market. But the oranges are on the trees after the first of March, and you would be liable to pick them at such time as they would bring the best price.

Mr. Call: Yes, they are ready from November, and from November until June those oranges are ready to pick, and we pick
1245 them in accordance with the public demand. Experience has taught about how many cars to ship to meet that demand.

Mr. Norton: We think we have the most detailed information upon that subject, and we are going to give it to the Commission. Mr. Barnwell is rather proud of his record on that.

Mr. Norton: Have you prepared a record of the commodities upon which an excess of $500,000.00 was earned during the fiscal year ending June 30, 1909, by the Atchison, Topeka & Santa Fe System?

Mr. Peabody: Exhibit No. 8 is such a statement, and it embraces the entire traffic of the Atchison, Topeka & Santa Fe System for the year ending June 30, 1909.

Mr. Norton: Why did you take commodities earning in excess of half a million?

Mr. Peabody: There are so many commodities that it would have made the statement unwieldy. The statements on citrus fruit are nearly half a million dollars, and I took the larger earning commodities, for instance you will notice we name wheat, corn, flour, other mill products, hay, straw, alfalfa, cotton, potatoes, lemons, oranges, dried fruit, trans-continental, other fruit, other agricultural products, the last embracing all the rest of the agricultural prod-
1246 ucts we handle, embracing commodities which do not pay us as much as half a million dollars. To have shown all the commodities would have made an unwieldy and confusing statement.

Mr. Norton: What is the net result of these comparisons?

Mr. Peabody: This table gives the cars, car miles, ton, net ton miles, gross ton miles, earnings, average load per car tons, average distance hauled miles, average earnings per car miles cents, average earnings per net ton miles cents, average earnings per gross ton miles mills. You will notice that there is no commodity in the entire list that pays as little as lemons and oranges per gross ton mile.

Commissioner Prouty: How do you get at the gross ton mile?

Mr. Peabody: Add the weight of the car to the weight of the load.

Commissioner Prouty: You make no account of any back haul?

Mr. Peabody: No, we make no account of any back haul. Those

weights are accurate. I took our entire equipment and averaged it. We have a list of equipment by car numbers, in which the weight of each particular car is given, and I averaged the entire list. Therefore it is absolutely accurate. I did that so as to get away from the charge of guessing. This is our actual average.

1247 And it shows that on lemons we get 3.493 mills—on lemons 3.265 mills per gross ton mile, and on oranges 3.493 mills.

Mr. Norton: Is that the lowest earnings on products of agriculture?

Mr. Peabody: The lowest of any commodity.

Mr. Norton: Lower than products of animals, products of mines, products of forests, manufactures, or miscellaneous?

Mr. Peabody: Yes, coal, lumber, or anything else.

Commissioner Prouty: You show here the average haul.

Mr. Peabody: Yes, sir, on each commodity.

Mr. Norton: Let's take your item of wheat. Your average haul there is 277 miles.

Mr. Peabody: No, the average haul on wheat is 323.

Mr. Norton: Well, take corn.

Mr. Peabody: Corn is 277.

Mr. Norton: Your average earnings per car mile are 26.2 cents and your gross earnings are 5.65 cents.

Mr. Peabody: Yes.

Mr. Norton: Your earnings on oranges, if I get it right, the fourth from the bottom——

Mr. Peabody: Yes.

Mr. Norton: Your haul is 1999 miles, and your earnings is

1248 12.8 cents per car mile, your gross earnings three and one half cents. Now, as a railroad man which business would you rather have, a business which you handle 277 miles, as you handle corn, or the business which you handle 1999 miles or 2000 miles, as you handle oranges?

Mr. Peabody: I had rather have the corn business. There is a very great error, how much of an error I have not yet been able to demonstrate, but I am at work on it—on the commonly accepted theory which has been in vogue so long, that the longer the distance the cheaper the haul. That is true up to a certain limit. But where you have to repeat the service by divisions, complete the service on one division and repeat it by divisions, to go over the longer distance, that reduction in cost disappears, with the exception of the terminal charge, which of course is distributed over the entire length of haul, whatever that may be, but the idea that it costs so much less for these long hauls is a serious mistake.

Commissioner Prouty: Then you think it is a fallacious idea that you can handle business a great deal cheaper if you handle it in train-loads and for long distances than if you have to pick it up and handle it for short distances?

Mr. Peabody: Oh, no.

1249 Mr. Norton: Well, that is what I am asking you. You handle this business in trains, take a solid train loaded here in California, you handle it as a train-load to Chicago, don't you?

Mr. Peabody: No, sir, I don't know—I don't think we ever haul solid train-loads.

Commissioner Prouty: Probably not exactly in the same train, cars are added and subtracted.

Mr. Peabody: I mean a train consisting of citrus fruit alone.

Commissioner Prouty: There is no reason why you shouldn't handle train-loads, is there, when you are sending out as many as a hundred and fifty cars a day from San Bernardino?

Mr. Peabody: Yes, because we can't haul as heavy trains on these mountain divisions as we can east.

Commissioner Prouty: Of course you subtract from and add to that train, but there are a certain number of loads of oranges that go through as a solid train. How large a train of oranges can you handle through?

Mr. Peabody: I don't know. But I have every wheel report, and I can ascertain that.

Commissioner Prouty: You can probably handle a train of thirty cars easily from here through?

Mr. Peabody: I should say that.

1250 Commissioner Prouty: And the earnings on that train would be how much?

Mr. Peabody: Six thousand dollars, six or seven thousand dollars, perhaps.

Commissioner Prouty: Wouldn't it be more than that? What are your earnings per car?

Mr. Peabody: Two hundred and fifty per car, for which the revenue per car—I haven't the revenue per car figured up.

Commissioner Prouty: It is a very easy matter to figure it.

Mr. Peabody: Yes.

Mr. Matthews: Ninety-six hundred, it figures up, thirty cars, fourteen tons, twenty-three dollars a ton.

Commissioner Prouty: Well, nine thousand dollars. How much does it cost you per train mile to move that train?

Mr. Peabody: That I do not know. I can ascertain.

Commissioner Prouty: You know approximately what it costs to move a train of that sort.

Mr. Peabody: It depends upon what you mean by "cost of moving."

Commissioner Prouty: I mean simply the cost of hauling the train.

Mr. Peabody: I haven't segregated that. It would be an immense calculation to get the exact amount of the cost. I have never attempted to segregate the exact amount of cost from any-

1251 thing else, because I never could see any advantage in knowing.

Commissioner Prouty: If you had no other business on your road except hauling those oranges to Chicago, and the empty cars back, don't you think you could make more money out of your road out of those rates than you make today?

Mr. Peabody: No, sir, I think not.

Mr. Norton: Did you ever figure on that proposition?

Mr. Peabody: I have attempted to make figures of that kind.

Commissioner Prouty: I think if you will just make the computation showing the number of trains you have handled in that kind of business, and the amount of revenue you obtain that you would be surprised to find out what the revenue would be.

Mr. Peabody: I know it would be large, but it would also—you have to maintain the organization from here to Chicago, on that little amount of business I am afraid it would run up the cost so it would be prohibitive.

Commissioner Prouty: I simply call your attention to the fact that the business out of which you obtain the long haul you are at practically very small expense for solicitation; it costs you something to get business, taken as a whole?

Mr. Peabody: Yes.

1252 Commissioner Prouty: You maintain offices all over this country to get your business of all kinds?

Mr. Peabody: Yes.

Commissioner Prouty: You pay a very small sum for getting this business, per mile?

Mr. Peabody: Yes.

Mr. Norton: You get the business here, where the cost of obtaining the business per mile is very much less than your cost on any other business?

Mr. Peabody: The cost of handling all told is a great deal greater than any other business.

Commissioner Prouty: Yes, because the mechanical cost of handling the business is greater than any other business?

Mr. Peabody: I guess so. The cost of doing the business is bigger than any business we have.

Commissioner Prouty: That is probably true. The cost of coal is greater here, the cost of engine-men is greater here, and some other items would not be as great.

Mr. Peabody: The agents' salaries are larger. You can't get a man to go out on the desert very cheap.

Commissioner Prouty: Well, your road—as I came over the Southern Pacific I noticed that a good many stations consisted of a board stuck up with a name on it.

1253 & 1254 Mr. Peabody: Yes.

Commissioner Prouty: No great expense for maintaining a station there?

Mr. Peabody: No, no great expense.

Mr. Norton: Did your Honor notice our station at Redlands?

Commissioner Prouty: Yes, you have a fine station out there.

Mr. Peabody: This statement is merely intended——

Commissioner Prouty: I think it is a very instructive statement.

Mr. Peabody: In this statement I have attempted to confine it merely to gross ton mile. I wanted you to have the entire information, and I think that statement is as comprehensive as it can be made.

Commissioner Prouty: Yes, it is a very good statement.

Mr. Peabody: And we think it fully supports the proposition

that as a revenue earner the citrus business does not compare with some of the other business we do.

Mr. Norton: The Commissioner refers to our ability to haul the citrus fruit in train loads. That is true also of the commodity corn, to which he refers.

Mr. Peabody: Yes, corn, cattle, wheat. I think we haul more cars of wheat in the same train than we do cars of citrus fruit in the same train.

Mr. Norton: Out of the grain producing states?

1255 Mr. Peabody: Yes, out of the grain producing states. We have solid trains of grain going to Galveston and other points for export. Citrus fruit is not peculiar in that regard.

Mr. Norton: Have you prepared a table making comparison between standard refrigerator cars and standard box cars on the Santa Fe system?

Mr. Peabody: Exhibit No. 9 is such a statement, showing comparison between standard refrigerator cars and standard box cars on our line.

Mr. Norton: I see you have compared the forty foot Santa Fe refrigerator Despatch car with the thirty-six foot standard box car.

Mr. Peabody: Those are our standards. We have very few forty foot box cars, very very few.

Mr. Norton: You have taken the car that handles our business?

Mr. Peabody: We have a great many hundreds of thirty-six foot cars.

Mr. Norton: State concisely what this exhibit 9 discloses.

Mr. Peabody: The original cost, you will notice, of the refrigerator car was $1419.63. Standard box car $1124.11. The cubic feet loading capacity of the S. F. R. D. was 1910 against 2248 for the smaller box cars. The cost per cubic foot capacity is

1256 .74 for the S. F. R. D. car and .46 for the box car. The maximum loading capacity is 60,000 and 70,000, respectively, for the refrigerator car and box car, which don't mean very much. The loading capacity is not the cubical capacity, that is to say, the figures are not representative of the cubical capacity.

Mr. Norton: Mr. Leeds explained the other day that we don't load in a refrigerator car up to 60,000 pounds.

Mr. Peabody: We don't load them with but 60,000, and there are a great many of the box cars we don't load up to 70,000. It merely means the amount it will carry. You can't always load it up to that weight.

Mr. Norton: He said there were restrictions against loading the refrigerators as high as 60,000.

Mr. Peabody: Yes, the load is limited to fifty on our refrigerators. Although the market capacity of the car is 60,000, that merely means the amount that the trucks will carry. The tare or light weight of the refrigerator is 49,500, and the tare of the box car is 37,500. The tare weight per cubic foot of capacity is 25.9.

Commissioner Prouty: Is that the weight of your car without ice?

Mr. Peabody: Yes, that is the actual weight of the car.
1257 The tare weight of the car per cubic foot of capacity is 25.9 in pounds for the refrigerator, and 15.3 in pounds for the box car. The tare weight in pounds per ton of loading capacity is 1650 for the refrigerator and 1071 for the box car.

Mr. Norton: Now, passing from exhibit 9, have you prepared a statement making a comparison of the average of the Santa Fe Refrigerator Despatch car and the box car of the same cubical capacity, showing the disparity in tare weight?

Mr. Peabody: Exhibit 10 shows that comparison. I selected two cars, the nearest possible to the same capacity, the refrigerator being 1894 cubic feet and the box car 1889, only five cubic feet difference. The average tare weight of the S. F. R. D. is 39803, or 9430 pounds, or 4.65 tons excess tare weight for the refrigerator car.

Mr. Norton: That is, in common parlance, the dead weight of the refrigerator car is 4.65 tons more than the box car?

Mr. Peabody: For a car of the same cubical capacity.

Mr. Norton: What do you mean by this parenthetical expression: "Series 16253-1762-1174 cars?"

Mr. Peabody: That is to identify the car in case anybody wants to check it up and see.

Mr. Norton: Those are the cars you used?

1258 Mr. Peabody: Yes, sir, the cars which contain 1889 feet. I wanted to give complete reference if anyone wanted to check up the details. We have 1174 cars of that particular capacity.

Mr. Norton: Have you prepared a statement showing the car mileage in perishable service on the Santa Fe railway system for the fiscal year ending June 30, 1909?

Mr. Peabody: Yes.

Mr. Norton: You may explain what your showing is.

Mr. Peabody: Such a statement is Exhibit No. 11. This statement shows S. F. R. D. loaded car miles, also foreign refrigerators, loaded car miles, used on our lines.

Commissioner Prouty: Does that refer to the loaded car miles irrespective of the fact whether the commodity required refrigeration or ventilation?

Mr. Peabody: Yes, sir.

Commissioner Prouty: That is to say, that if you loaded a refrigerator car back with some commodity not requiring refrigeration it is included in this statement?

Mr. Peabody: That is right. The perishable freight, car miles, is shown in that statement just below. Whereas we had 97,000,000 loaded car miles in refrigerator cars only fifty millions
1259 odd was loaded with perishable freight.

Mr. Norton: The rest of it being non-perishable?

Mr. Peabody: The rest of it being non-perishable. We had 46,718,000 car-miles of refrigerator cars loaded with non-perishable fruit.

Commissioner Prouty: Which you might have carried in the lighter car?

Mr. Peabody: Which we might have carried in the lighter cars. The unnecessary tare weight haul on exhibit 11 is—to the preceding exhibit 10, is 4.65 tons. That is the excess of weight for each car.

Mr. Norton: In that line you say "14."

Mr. Peabody: That is the old numbered exhibit. That should be exhibit 10. I didn't go through and correct that. Exhibit 10, which is this, is the one showing the excess weight of 4.65 tons.

Mr. Norton: Now, proceed.

Mr. Peabody: That made an unnecessary gross ton mile's haul because of the extra weight of 217,000,000 gross ton miles. The average cost on the system, loaded gross ton miles, is 2.957 miles.

Mr. Norton: Now, do you want to refer in the parenthesis
1260 to 19. Is that correct?

Mr. Peabody: I have changed these exhibits somewhat. I will bring out that cost later. I don't know what exhibit it is on.

Mr. Norton: Very well.

Mr. Peabody: The actual average cost per gross ton miles on the Santa Fe for that year was two mills and nine hundred and fifty-seven thousandths, almost three mills per ton mile. Computing that gross ton miles of 217,000,000 on that basis makes an extra cost of $642,384.03, making the sum, for perishable car mile of 1.271 cents. That would be chargeable to citrus fruit, that haul of 31,000,000 car mile citrus fruit, chargeable to the citrus fruit traffic, $399,431.88, or an average per car of $25.20. That is the load that should be put upon the citrus fruit business because of the extra weight handled in the cars.

Commissioner Prouty: Now, you say that the average cost of handling a gross ton is 2,957, and you refer to some exhibit which will explain what you mean by that, how you arrived at the cost.

Mr. Peabody: Yes, sir. You are familiar with our method of that, Mr. Prouty: I have the figures and will show them up in a later exhibit.

1261 Mr. Norton: I should perhaps have taken these and run them backwards.

Commissioner Prouty: No, that is all right.

Mr. Norton: It will come out all right. Now, Mr. Peabody, you note here the excess on necessary cost chargeable against perishable traffic as $642,384?

Mr. Peabody: Yes, sir; amount of perishable traffic chargeable to citrus fruit, $399,431.88.

Mr. Norton: That is made up, not only in part of the dead haul say to California, but which is transported in actually refrigerated freight, but also of the dead haul which is made necessary by use of these cars in other service?

Mr. Peabody: That is the dead haul. This does not include the dead haul of the car when it is used by citrus fruit; this is the amount of haul, the tons of haul, that was made necessary because of using the refrigerator car in the place of a lighter car.

Mr. Norton: Well, that is what I am getting at.

Mr. Peabody: And it is only when it was not being used in the citrus fruit traffic. We hauled that amount of dead weight in other traffic because we had to have these citrus fruit cars.

Mr. Norton: Well, it was better to haul it in the other
1262 traffic than to leave this equipment idle and provide the ordinary box car.

Mr. Peabody: Oh, we could not leave the equipment idle. It is better to load a refrigerator car, when it is coming west, with other freight, notwithstanding this disability, because, if we don't, we would have to haul that refrigerator car empty and then put the freight in a box car and haul it west and then when the return load comes we would have the refrigerator loaded and we would have to haul that box car back empty again, so that it is very much cheaper to haul it in that way.

Commissioner Prouty: Now, this exhibit shows citrus fruits should be charged $25 and some cents a car by virtue of the fact that you do use these refrigerator cars in westbound movement of other commodities which are not perishable.

Mr. Peabody: Yes, sir:

Mr. Norton: You have some other statement which shows how much should be charged by virtue of the fact that a large part of these cars come back empty?

Mr. Peabody: Yes, sir.

Mr. John H. Call: What is the tonnage—to what extent do you load the citrus fruit cars as compared with the ordinary freight car?

1263 Mr. Peabody: Well, if loaded to its full capacity it would be about seventeen per cent less.

Mr. John H. Call: Well, I am asking you how, in fact, you do load them.

Mr. Peabody: We load them at convenience. We usually use them for merchandise which don't load over twelve or thirteen or fourteen thousand pounds, as the case may be. It depends largely upon the class of merchandise that happens to be there at that time.

Mr. John H. Call: Your average car is fifteen tons this year, I believe—average carload?

Mr. Peabody: Average carload fifteen tons? Oh, no, it is twenty-two or twenty-three tons.

Mr. John H. Call: I am not speaking of capacity.

Mr. Peabody: No, the average carload. Our average carload was—the actual average carload of revenue freight——

Mr. John H. Call: 1835——

Mr. Peabody: No, that is not right. The average carload of freight for last year was 21.47 tons per carload. That is the loading of revenue tons; the loading that is referred to in the annual report, isn't that. That is the total loading of all cars, revenue, company, and everything else.

1264 Mr. Norton: Passing from exhibit 11, have you prepared a statement of mileage made by the Santa Fe Refrigerator

Despatch of cars on the Atchison, Topeka & Santa Fe Railway System for the year ending June 30, 1909?

Mr. Peabody: Exhibit 12 shows such a statement, showing the loaded eastbound and the empty eastbound of the various portions of the system of the S. F. R. D. cars and the loaded and empty westbound cars in the same way, and the total.

Mr. Norton: What is that table made up of?

Mr. Peabody: The table is all four added together, the loaded and empty eastbound and the loaded and empty westbound added together.

Mr. Norton: Both ways?

Mr. Peabody: Both ways, and then it shows the ratio of empty westbound to loaded eastbound, the idea of that being that these cars, being utilized, as they are, for distribution all over, in different portions of the country, it was not possible to show the actual mileage chargeable to citrus fruit by taking that mileage. For instance, we load a refrigerator car and it is shipped from Chicago to San Francisco, and a great many northern California points. We haul that back empty to southern California to get the
1265 oranges. That is really, so far as the effect of the business is concerned, a westbound haul; it goes into our eastbound mileage, showing this large amount of eastbound mileage, as a haul of that character. It is an empty haul eastbound to reach the point where the oranges are.

Mr. Norton: In reality it is an empty haul after a load?

Mr. Peabody: It is really, in the general acceptance of the term, a westbound haul, although it moves east. It moves from northern to southern California empty to get the oranges. So for a more accurate comparison I took the empty westbound and the loaded eastbound as being more representative. I have also prepared—I did not have time to get it into exhibit form—but I made up the figures of the passing of our cars at Seligman. The reason Seligman was selected was because that point on the line is west of Ash Fork where that S. F. R. & P. business would come in to disturb the actual showing.

Mr. Norton: Seligman, Arizona?

Mr. Peabody: Seligman, Arizona.

Mr. Norton: And the S. F. P. & P. business is on that line from Phœnix up north to Ash Fork?

Mr. Peabody: That would all be disposed of east of that point, so that the empties and loads moving by Seligman would show
1266 more accurately the respective loading of citrus fruit and the empty cars in connection therewith.

Mr. Norton: Have you that ready now?

Mr. Peabody: I can read it into the record. I have but this one copy, and it is a small statement. The refrigerators eastbound, loaded, passing that point, for a year, were 19,263; the empty eastbound was only 37 cars during the entire year. I don't know, there might have been a call for some reason down on the Ash Fork line for a few empties. The loaded westbound for the same year was 12,932, and the empty westbound 6531. In other words, the empty

west-bound was 50.5 per cent of the loaded west-bound. But you will recall that Mr. Leeds testified that we gradually accumulated cars during the early part of the season, that is, from July to November, so that we would have a supply of cars in southern California to start with. We accumulated during that period from July to January, that same year, an accumulation of 1,489 cars—we had 1,489 cars on hand empty in southern California in January. The movement of the loads of empties after that period was just about half and half—in February, March, April, May and June, 5357 loads west and 5,171 empties west, almost fifty per cent during that busy period of the year when we were handling the large amount of citrus fruit.

1267 Commissioner Prouty: Can't you tell us, taking the year as a whole, how many empty refrigerator cars going from Seligman to the west and how many loaded cars?

Mr. Peabody: 50.5——

Commissioner Prouty: Well, give us the number.

Mr. Peabody: Well, I did. It is 12,932 loads moving west, 6,531 empties moving west.

Commissioner Prouty: That is the total number?

Mr. Peabody: That is the total number.

Commissioner Prouty: So that about two-thirds of your cars move west under load and one-third empty?

Mr. Peabody: That is right.

Mr. Norton: Is that for the entire year?

Mr. Peabody: For the entire year.

Mr. Norton: The fruit year or fiscal year?

Mr. Peabody: That is the entire year.

Mr. Norton: The calendar year?

Mr. Peabody: You will notice that the ratio of empty westbound to loaded eastbound, as shown by Exhibit 12, on the Coast Line, is 31 per cent, which is less than the figures that we have shown as passing Seligman. But those are the figures, 31.53.

1268 Commissioner Prouty: Taking your system as a whole, what is the percentage of your empty car movement, all kinds of cars, in your whole system?

Mr. Peabody: Empty cars?

Commissioner Prouty: Yes.

Mr. Peabody: I don't know.

Commissioner Prouty: Well, I think it runs, generally, from twenty-six to thirty per cent. I don't know what it is on the per cent basis.

Mr. Norton: You might explain, for those who do not understand our system here, you have the Coast Line, A. T. & S. F., Southern Kansas, Texas & Eastern Railway Systems, and the——

Mr. Peabody: The Santa Fe System is divided into five separate organizations—the A. T. & S. F. proper, embracing the lines east of Albuquerque—well, that is not exactly correct. The Coast Lines, embracing the lines west of Albuquerque, with the exception of the Santa Fe, Prescott & Phœnix; the A. T. & S. F.—to describe it better, the G. C. & S. F., embracing the lines south of Purcell, in

Oklahoma, and the lines in Texas; the Eastern Railway of New Mexico system, embracing the lines in New Mexico, not including the line from Albuquerque to La Junta; and the A. T. & S. F. takes the balance of that system east of Albuquerque.

1269 Mr. Norton: Well, these are just simply grand operating divisions of the system?

Mr. Peabody: Yes.

Mr. Durbrow: It appears from the data furnished by the Pacific Fruit Express Company, that the total movement of the west-bound cars of the P. F. E. is about 75 per cent of the total amount, which is much greater than the percentage movement of the Atchison, Topeka & Santa Fe cars or the car line that represents and acts for that company. I want to ask you if you can assign any reason why the movement of west-bound cars of the Pacific Fruit Express would be greater than on the Atchison line?

Mr. Peabody: The only reason I could assign is that the initial line, at Chicago, are not particularly interested in loading the Pacific Fruit Express cars; the Chicago & North Western don't care whether they load a Pacific Fruit Express car or not; it costs them no more to send it out empty than it does loaded, whereas our line, originating the business at Chicago, strive to practice every possible economy in the operation of the road, and therefore utilize those cars. It is for our advantage to load them in that way. That is the only reason I can give; I don't know that that is the correct reason.

1270 Mr. Durbrow: Well, you have the advantage, then, of the Southern Pacific Company to the extent that your line reaching Chicago, and of course reaching the Missouri River, that at those large shipping points of westbound freight you are enabled because you control the operation of the line from eastern points, to load a greater percentage of cars of the Pacific Fruit Express; it is not owing to the fact that you have more cars than the Pacific Fruit Express, because I understand you have not.

Mr. Peabody: No, we haven't as many. We simply control the loading at the initial point, and the Pacific Fruit Express does not control the loading of the different lines it runs over.

Mr. Norton: Passing, now, from exhibit 12, have you prepared a statement showing for the Atchison, Topeka & Santa Fe Railway System the revenue and——

Commissioner Prouty: This is now Exhibit 13?

Mr. Norton: This is Exhibit 13.

(Continuing:) Revenue and company net ton miles on the main line only of the division between Chicago and Los Angeles by way of Clovis, from July to December, 1909, inclusive.

1271 Mr. Peabody: This will be Exhibit 13, and I have followed in this exhibit the line over which the oranges travel between Southern California and Chicago excluding all other portions of the line, selecting merely the main line.

Mr. Norton: What is the purpose of the table?

Mr. Peabody: It shows the revenue ton miles, the company ton miles, and the total ton miles handled on those divisions.

Mr. Norton: Why have you segregated it into divisions?

Mr. Peabody: The company ton miles are handled, of course, without revenue, but they are as essential and necessary to the operation of the road as the revenue ton mile. We haul the company ton miles in order that we may be able to haul the revenue ton miles, and consequently the revenue ton miles are properly chargeable with the cost of hauling the company ton miles, as a part of the expense of doing business, as much so as the wages of the trainmen or anything else.

Mr. Norton: Why have you divided those up into the Missouri, Western, Panhandle, and other divisions?

Mr. Peabody: Those are the divisions over which the citrus fruit travels in going to Chicago, and I am making in that table a basis of calculation of the cost of transporting citrus fruit. You will notice that the percent of the total ton miles to the revenue ton miles
1272 is shown in the right-hand column. For instance, the total ton miles on the Illinois division is 125.82 per cent of the revenue ton miles, or, in other words, there is a little less than 25 per cent of the total tonnage that is company tonnage. Returning through the various divisions it varies, the Missouri division only 120 per cent, and on the eastern division 111 per cent, and so on through the various divisions. The object of that is to ascertain the portion of the cost of the transportation which is properly chargeable to the revenue business.

Mr. Norton: The percentage that is chargeable?

Mr. Peabody: The percentage that is chargeable.

Mr. Norton: Have you prepared a statement showing the cost, per revenue ton mile, gross, of the main lines from Chicago to Los Angeles, by divisions?

Mr. Peabody: The next table, Exhibit 14, gives the application of those per cents to the gross ton mile cost of the same divisions. For instance, the gross ton mile costs under the Illinois division was 1.506. The application of the per cent of the total to the revenue, and brings the cost for the revenue up to the—the added cost, so as to bring up the total cost for the revenue, to 1.895.

Commissioner Prouty: You say including proportion of
1273 empty ton mileage; what do you mean by that?

Mr. Peabody: Beg pardon?

Commissioner Prouty: You say in the last column, "Including proportion of empty ton mileage."

Mr. Peabody: The thirty-one per cent of the empty mileage applies.

Commissioner Prouty: Yes, but I thought that this 1.895 was just 125 per cent of 1.506. Now, just where do you put in this proportion of empty ton mileage—in the first column or in the last column?

Mr. Peabody: That is included in the first column, of gross ton miles. That is merely to show that we have included everything.

Mr. Norton: And the figure in your first column is multiplied by the per cent in the second column, producing the third?

Mr. Peabody: Yes, sir. That is followed through the various divisions in the same way. And those two tables were prepared leading

up to the next exhibit—well, no, there is another exhibit that is preparatory, also.

Commissioner Prouty: How does it happen that your gross ton cost is so much more in the Los Angeles division than it is in
1274 the eastern division? It is almost three times as much.

Mr. Peabody: It is because of the volume of business, measured by the expenses. The volume of business on the Los Angeles division is very, very small.

Mr. Commissioner Prouty: What is the Los Angeles division?

Mr. Peabody: That is the division south of Barstow, and this is the main line, only.

Commissioner Prouty: How many miles?

Mr. Peabody: From Barstow I think it is 141 miles to Los Angeles. You see the Cajon Mountain comes in there, and it is a very expensive proposition, and on that eastern division it *it* is a perfectly flat country.

Mr. Norton: Mr. Chambers says there is 500 miles, approximately, in the division.

Mr. Peabody: The total miles in the division I can give you.

Mr. Norton: That is near enough.

Commissioner Prouty: Is this your cost on the total division or on the main line?

Mr. Peabody: On the main line. Some branches cost immensely more than that. This follows the movement of citrus fruit right through. That is the object of the exhibit, and it is confined to the main line only.

1275 Mr. Norton: Have you a statement showing the proportioned taxes, rentals and interest on the fruit traffic for the year ending June 30, 1909?

Mr. Peabody: Exhibit 15 is such an apportionment of what might be called the fixed charges to the various traffic.

Mr. Norton: Explain that as you may think necessary.

Mr. Peabody: We hold that every part of the business should share its proper portion of the fixed charges. They have got to be paid and they should be scattered over the entire traffic of the company so that no single portion will be unduly charged by having the fixed charges allotted to some other portion.

Commissioner Prouty: Do you hold that every ton should pay the same amount?

Mr. Peabody: I hold that every car——

Commissioner Prouty: No, that every ton should pay the same amount of the fixed charges?

Mr. Peabody: If you please, although I have used here the car mile basis, because it was very difficult to get at it in any other way. I have taken the total car miles of the system and divided it into the total fixed charges to obtain the car mile basis, and then applied that to the car mile of citrus fruits.

Commissioner Prouty: I thought you generally reduced
1276 your computations to the gross ton.

Mr. Peabody: In all except the fixed charges. It is not as feasible to use, and in all my computations I have used the car

mile basis. It is so in the computations in the cattle case and all those cases.

Commissioner Prouty: Is it your opinion that the dividends may properly be distributed in the same way?

Mr. Peabody: The dividends are not included in this at all.

Commissioner Prouty: I know, but the stockholders are entitled to those dividends. Now, is the amount to which the stockholder is entitled in dividends to be distributed—should it be distributed on the car mile basis in the same way that you distribute your fixed charges?

Mr. Peabody: Well, I haven't thought of that proposition, your Honor, one way or the other.

Commissioner Prouty: Well, I am simply getting at this: is it your theory of correct method that a rate should be so made that every article of traffic will bear the same proportion with every other article of traffic of the cost of handling the business?

Mr. Peabody: That would be a beautiful theory, but utterly impracticable.

1277 Commissioner Prouty: I ask you if it is your theory.

Mr. Peabody: No, sir.

Commissioner Prouty: Then that is the theory on which you distribute your taxes and your interest, is it not?

Mr. Peabody: That is distributed on the theory that each of the classes of traffic should pay its proportion of the taxes and interest.

Commissioner Prouty: Yes, but their proportion is determined by the number of tons. Each ton should pay the same proportion.

Mr. Peabody: I would just as leave distribute it that way; that is, if put on a gross ton theory it would charge a very much larger amount to citrus fruit.

Commissioner Prouty: You couldn't make your rates on that theory?

Mr. Peabody: No.

Commissioner Prouty: Rates never have been made on that theory?

Mr. Peabody: Rates never have been made on that theory; the competition comes in.

Commissioner Prouty: Just what is the value of the computation, if you never had any rates on that theory and never

1278 could make your rates and never ought to make them on that theory—just what is the value of the computation?

Mr. Peabody: The computation does not deal with rates but costs. This is the outgo and not income that it deals with. Rates are income and costs are outgo. This is the distribution of the outgo.

Commissioner Prouty: That would be true if you were to leave out your interest on the bonds. In Texas they don't allow you to issue either stocks or bonds over the value of your property.

Mr. Peabody: That is right.

Commissioner Prouty: But you may make it all stock or make it all but a thousand bonds. Now, if you make all your value except a thousand dollars, bonds, and charge all your interest to oper-

ating expenses, you have virtually said that the entire sum which your road is entitled to earn should be distributed, ratably, among the gross tons which that road handles?

Mr. Peabody: That would be perfectly correct, on that theory, because there would be only a thousand dollars of stock on which the dividends would necessarily be very, very small, and you would have to distribute the interest costs——

Commissioner Prouty: Now, it has been insisted before
1279 the Commission by Mr. Durbrow's company—I am not certain whether it was by Mr. Durbrow or not—that they were entitled to earn on the value of their property. It would make no difference whether it was stock or bonds. Now, what is your view about that?

Mr. Peabody: We make a similar insistence.

Commissioner Prouty: If that is true, why do you distinguish between the interest on your bonds and the dividends on your stocks in determining the expenses of your operations?

Mr. Peabody: Well, the reason that I used the interest, taxes and rentals as a fixed charge is because that is the amount we have to pay. If — were fortunate enough not to owe anything in the way of bonds, if we were fortunate enough to have the stockholders entirely own the property, then it would be perfectly proper to apportion, on the amount of business which we handle, an amount equivalent to the amount that we are entitled to earn on our stock. This, by using merely the fixed charges as against the six per cent which we are entitled to earn, would reduce the proportion chargeable against the freight very greatly, as will appear in the future statement which I have here. The expense chargeable—if the freight is chargeable with the six per cent which we are entitled
to earn, the amount of the charge would be very, very much
1280 greater than it is on this computation.

Commissioner Prouty: Well, there are instances where the value of the bond is greater than the value of the property. Now, I am simply pointing out to you that by that method of computation, by your method of determining how much return each commodity ought to make, you assume that each ton is chargeable with the same amount, although no rate ever was made and no rate ever can be made on that theory as long as commercial conditions exist.

Mr. Peabody: That may be true; but that is the basis I have used, because we have to distribute these charges in some way, and if your Honor can indicate a more equitable way I would like to know it.

Commissioner Prouty: If you would leave out your interest charge and distribute simply the amount that you, as the owners of the property, pay out, I think you would then have determined the cost of handling this business upon the assumption that the cost of handling every gross ton is the same; but that is another phase of traffic computation, because the cost of handling every gross ton is nothing like the same.

Mr. Peabody: Then how will you provide for the interest,
1281 which we do have to pay, and the taxes, etc.?

Commissioner Prouty: Why, I think you must allow a fair compensation upon the value of the property. My own belief is that you should consider the amount which stands as a bond and the interest which you do pay on that bond. I think that that should be considered, and the amount which the stockholders are entitled to earn is the amount over and above that; that is, that the interest on the bond is more in the nature of a fixed charge or operating expense than it is interest on the value of the property.

Mr. Peabody: You will find as we go along that I put these separately in the statement, so that the operating costs are shown in one item and the interest, etc., in another item, so that you can understand exactly.

Mr. Norton: I understand in one statement of the Commissioner that interest should not be included, and in your last statement that it should be.

Commissioner Prouty: Oh, no, I said Mr. Durbrow's company had claimed that it was entitled to earn on the entire value of the property. The Commission said in the Spokane case, I think, that we ought to consider the interest. A railroad is obliged to pay on a certain amount of its bonded indebtedness. For example, the Southern Pacific Company can issue a certain amount of
1282 bonds—your company can and does issue a certain amount of bonds on which it pays four per cent. The security is absolutely good, and the bonds can be sold on the market for that price. Now, it seems to me that you are not entitled to earn an additional two per cent on that hundred millions. Why should you be? The public can borrow, anybody can borrow. Why should you be entitled to an additional two per cent on that simply because you have borrowed it?

Mr. Norton: Perhaps you are correct, if that is in excess of the value of the property.

Commissioner Prouty: No, it would not be in excess. It wouldn't be anything like the value of the property.

Mr. Peabody: May I answer that question?

Commissioner Prouty: Yes.

Mr. Peabody: Simply because, in addition to that amount which we have borrowed at four per cent, we have to put the money that we have earned into the road which would increase the cost of the property more than the amount represented by the four per cent, and we are entitled to interest on the money we have invested in the property.

Commissioner Prouty: You are entitled to earn something on the value of the property in excess of your bonds. You are
1283 entitled to earn on your stock if there is any value there which stands against the stock.

Mr. Peabody: There is always a risk attaching to the earning of money by a railroad and no risk attaching to the earning of four per cent on the bonds, and consequently the railroad is entitled to

earn a higher rate of interest than the bondholder is entitled to get because of his absolutely perfect security.

Commissioner Prouty: I think the stockholder is entitled to a higher rate than four per cent on the balance of the value of his property.

Mr. Peabody: Well, that is a part of the value of his property.

Mr. Norton: Do I understand the theory of the Commissioner is that even if the bonds do represent the entire value of the property and two or three millions borrowed in addition to that the borrower is not entitled to make anything on the money which he uses in the business because he borrowed it in excess of the value?

Commissioner Prouty: I don't suppose you borrow any money in excess of the value. I understand your bond is very much less than the value.

Mr. Norton: Yes.

1284 Commissioner Prouty: Well, proceed.

Mr. Norton: Do you want to say anything further about exhibit 15?

Mr. Peabody: It merely shows the taxes and interest and fixed charges reduced to the car mile basis, and will be applied in the following exhibit.

Mr. Norton: Have you prepared a table showing the average cost of handling cars of lemons from the average point of origin, Santa Ana you have taken, in California, to the average destination, based on figures and averaged as given in the preceding exhibit which you have just examined, for the year ending June 30, 1909?

Mr. Peabody: Exhibit 16 is a result of the operation found by using three previous exhibits, and I don't know how far the Commission wants me to go into the explanation of the way in which that was obtained for the benefit of counsel on the other side.

Mr. Norton: State generally what it shows, and we will then consider the rest.

Mr. Peabody: It shows first the movement by divisions on the average movement of lemons. Our average movements on lemons for that year would have carried a car from Santa Ana to

1285 Hurdland, Missouri, 1,999 miles, that is, taking the average movement on every car of lemons we handle, and I have taken it straight from Santa Ana and followed the car through the divisions over which it travels, up to Hurdland, Missouri, showing the number of miles traveled in each division. I have taken the average tons to the load, which was 13.49, the dead weight of the car, and the 31.53 per cent which is shown to be the Coast Line's per cent of empty movement for their return load, amounting to 6.27 tons, and then added the four tons of ice as the average amount of ice that we haul in a car, making a total of 44.62 tons.

Mr. Norton: Gross ton miles?

Mr. Peabody: No, 44.62 tons. That, multiplied by the number of miles in each division, brings the gross ton miles, as shown in that column; and I have in the next column extended out the operating cost per gross ton mile on each one of the divisions, each

separate division, so as to show the operating cost per car in the right hand column, amounting to, on a car of lemons, $194.06, which is the operating cost to which the Commissioner referred. I have added to that amount the sum allowed for the taxes, rentals and interest properly chargeable to that car, based, as I stated be-
1286 fore, on the total car miles of the road divided into the total fixed charges of the road, and that made an item of $59.94, which, added to the operating cost, makes a total charge against this car of $254. The average revenue per car of lemons is $226.65, showing a deficit on the average car of lemons, refrigerated, of $27.35. If the car was not under ice there would be a deduction for weight of the ice, which would amount to $17.39. That would leave, on a car under ventilation, a deficit of $9.96. Now, I do not want to be understood right there as saying that our loss on handling this car of lemons is $27.35 for a refrigerated car, or $9.96 for a ventilated car; but I do want to say that if we assign to the lemon the proper proportion as indicated in those statements of the fixed charges chargeable to that fruit we would not receive *into* $27.35 on a refrigerated car and $9.96 on a ventilated car the amount necessary to pay those fixed charges. It would of course be better to haul that car if we got a single cent over $194, we would make money by doing it, but the amount that we lack of the $59.94 would have to be charged to some other traffic, because it would have to be paid by some other traffic. If we got $195 we had better haul it than not.

Mr. Norton: Now, I understand, then, that it falls short by
1287 the amount stated of paying its due proportion of the——

Mr. Peabody: Fixed charges.

Mr. Norton: Fixed charges and——

Mr. Peabody: By $27.35 on a refrigerated car and $9.96 on a ventilated car of lemons.

Mr. Norton: Nevertheless it yields a part of the cost of hauling?

Mr. Peabody: It does help to pay those charges, which must be paid, but it does not pay its proper proportion.

Mr. Norton: Have you prepared a like table as to oranges?

Mr. Peabody: The next statement is——

Mr. Norton: Well, the next is lemons also.

Mr. Peabody: The next is lemons, showing how much less we receive on a car of lemons going to Buffalo and New York.

Mr. Norton: That is table 17?

Mr. Peabody: Table 17. The same factors are considered.

Mr. Norton: The same computations are made?

Mr. Peabody: The same computations are made, except that, of course, we carry that car going to New York as far as McCook instead of stopping at Hurdland, because we have to carry that clear by. The other tonnage is based on the average haul.

1288 Mr. Norton: McCook is just outside of Chicago?

Mr. Peabody: McCook is just outside of Chicago, where we deliver to the connecting line. And, figuring it on the same basis, we find a deficit on the Buffalo car of $51.29 on the refrigerated car, and $32.59 on the ventilated car.

Mr. Norton: Yes, that speaks for itself. And you make the same explanation, that this traffic falls short of paying its due proportion of the operating expenses?

Mr. Peabody: Of paying its due proportion.

Commissioner Prouty: I understand that in this case, according to your computation, the actual cost of handling that car is $208.63?

Mr. Peabody: Yes, sir.

Commissioner Prouty: And your proportion is only $199.35?

Mr. Peabody: That is on the New York car.

Commissioner Prouty: I am talking about the New York car.

Mr. Peabody: Yes, sir.

Commissioner Prouty: So that in a case of that kind you actually handle it for less money than you receive?

Mr. Peabody: That is right, sir.

Commissioner Prouty: Do you think that is so?

Mr. Peabody: I do.

1289 Commissioner Prouty: You think you lose money when you handle that car?

Mr. Peabody: We do. Of course it is to be said——

Commissioner Prouty: Referring now, to exhibit No. 16. Take that first item, Santa Ana to Barstow, $19.77, how is that arrived at?

Mr. Peabody: That is arrived at by taking the actual operating cost on that division for the year and dividing it by the total gross ton miles for the year on that division.

Commissioner Prouty: That is to say, you assume in stating that it costs $19.77 to handle this car, that the cost of handling every gross ton on that division is the same, or, rather, you assume that the cost of handling the gross ton in this exhibit is the same as handling the average gross ton on that division?

Mr. Peabody: That is hardly stated correctly, according to my theory. My theory in this connection is that citrus fruit costs at least as much as the average. This is the average cost.

Commissioner Prouty: Well, I am just getting at what you have done. You have taken the gross tons on that division?

Mr. Peabody: Yes, sir.

Commissioner Prouty: You have taken the total operating

1290 costs on that division?

Mr. Peabody: Yes, sir.

Commissioner Prouty: And you have divided the total operating costs by the total gross tons?

Mr. Peabody: Yes, sir.

Commissioner Prouty: And in that way have determined the cost of handling a gross ton on the average?

Mr. Peabody: The gross, yes.

Commissioner Prouty: You have assumed that the cost of handling a gross ton of this citrus fruit is as great as the average gross ton cost?

Mr. Peabody: Yes, sir.

Commissioner Prouty: Now, if that assumption is not true, your computation is not true?

Mr. Peabody: That is correct.

Commissioner Prouty: So that the value of your computation depends on the correctness of that assumption?

Mr. Peabody: Yes, sir. I think we will have no difficulty in establishing that fact by proof. In fact I think it will be admitted by anyone that knows the circumstances.

Commissioner Prouty: You would be inclined to admit it anyway.

Mr. Peabody: I would be inclined to admit it, and I
1291 think the citrus fruit growers would admit the same thing.

Mr. Call: Not by any means.

Mr. Peabody: Well, if they know anything about the business.

Mr. Call: Well, we do not.

Mr. Peabody: Perhaps that is true.

Mr. Norton: These exhibits 16 and 17 seems to me to be strikingly confirmatory of the letter of President Ripley which I read the other day; did you hear it?

Mr. Peabody: Yes, sir.

Mr. Norton: Stating that he did not believe that the rate desired by Mr. Chambers and authorized by him would pay the proper cost of handling the business?

Mr. Peabody: It shows that his judgment was absolutely correct.

Mr. Norton: Passing from Exhibit 17, I will ask you whether you have made a table showing the average cost of handling a car of oranges in similar manner to the preceding table that we have just reviewed?

Mr. Peabody: Table 18 is a statement of that sort. It is on oranges; and, without going into the details, it shows that on a refrigerated car of oranges the deficit is $10.05; on the ventilated car of oranges the surplus is $8.04.

1292 Mr. Norton: The average distance is what?

Mr. Peabody: 1,999 miles, the average distance hauled, which would bring it up to Decorra, Illlinois, being the average distance hauled on all of the oranges that we handle.

Mr. Norton: Have you prepared a table showing the average cost of handling a car of oranges to Chicago or McCook, which is the same as Chicago?

Mr. Peabody: Well, destined to Buffalo and——

Mr. Norton: Destined to Buffalo and New York.

Mr. Peabody: The same computation is made on oranges as was made on lemons, and the result shows that to Buffalo the deficit on a refrigerated car of oranges would be $22.74, and on a ventilated car $3.15. On a New York car, refrigerated, it would be $34.39, and on a ventilated car $34.80.

Mr. Norton: The cars in each instance paying a part of the operating charges?

Mr. Peabody: The car in each instance, of oranges, even, going to New York, paying a part of the fixed charges.

Mr. Norton: But not their proper portion?

Mr. Peabody: Not their proper proportion.

Mr. Norton: Now, if the rates of your company had been constructed on a basis which you seem to think is a proper basis for

constructing rates, would any oranges ever have been grown
1293 here in California and transported east?

Mr. Peabody: Yes, sir. Right on this basis it shows a surplus on a ventilated car of oranges now.

Mr. Norton: But not as much of a surplus as it ought to show, does it?

Mr. Peabody: It pays its portion of the fixed charges and is $8.04 to the good. We would be very glad to get oranges on that basis right along.

Mr. Norton: You show a deficit to all points east of Chicago, and you show a deficit to Chicago in some cases?

Mr. Peabody: No, on the average on all that we haul, including Chicago and New York, our entire average shows, on the ventilated cars, $8.04 surplus.

Mr. Norton: I understood you to show on a Chicago car a deficit of $10.05 under refrigeration and a surplus of $8.04——

Mr. Peabody: No, not the Chicago car. That is the average on all cars. 18 shows the average of every car we handle, and on the average of all we handle, on the refrigerator car the deficit is $10.05 and on the ventilated car the surplus is $8.04 over the total charges.

Mr. Norton: Where is Decorra, Illinois?

1294 Mr. Peabody: It is 1,999 miles from Santa Ana; that is merely to locate the point.

Mr. Norton: It is pretty well down toward the Mississippi River—the other side of Fort Madison.

Now, I understand that when you transport that car to Decorra you show a deficit of $10.05 under refrigeration and a profit of $8.04 under ventilation?

Mr. Peabody: Yes, sir.

Mr. Norton: You say average revenue per car on oranges; what do you mean by the average revenue per car on oranges?

Mr. Peabody: I took our entire business for the year and divided it by the number of cars for the year, and that showed the average revenue on the car, which was $255.78.

Mr. Norton: Why do you compare your average revenue with your transportation only up to Decorra?

Mr. Peabody: Because that was the average revenue on the average distance.

Mr. Norton: Do you think this is the average distance?

Mr. Peabody: That is the actual average distance. That is the actual average distance of every car we handle.

Mr. Norton: So that on your entire business you made $8.04?

Mr. Peabody: Per car. That is for the ventilated.

Mr. Norton: Yes, and you lost $10.05 on the other?

1295 Mr. Peabody: Yes, sir.

Mr. Norton: And since about half of it went under refrigeration, they net result of your operations must have been a loss?

Mr. Peabody: Pretty nearly even, that is, including—that, you understand, includes the fixed charges.

Mr. Norton: But including the lemons it would have resulted in an absolute loss?

Mr. Peabody: Oh, yes, including the lemons; but the oranges came pretty near paying up.

Mr. Norton: We did not lose it; the $10.05 is not loss.

Mr. Peabody: It merely failed to pay its proportion.

Commissioner Prouty: That is what these tables show, that you did lose it?

Mr. Norton: I mean that your statement would indicate in the record—although we know what you meant—that it fell short of paying us anything.

Commissioner Prouty: My statement, of course, is that Mr. Peabody's statement indicates that there is a deficit in handling these oranges, and there is a still larger deficit in handling the lemons. As the Commission said, or, as I think I said in my original re-
1296 port, in the original case, it is nonsense to talk about this business being handled at a loss when eastern lines which receive less for their proportion than your line receives did until recently send their agents out here to buy this traffic for the sake of handling it from Kansas City over their lines to Chicago.

Mr. Peabody: I think if your Honor will think for a moment you will admit that that proposition is not altogether sound. Railroads do solicit business very frequently that don't pay them anything.

Mr. Norton: They have their solicitors here for west-bound business as well as other business?

Mr. Peabody: They solicit business which actually pays less than their expenses. I received my highest compensation that I ever received from my superior for getting five cars of potatoes that paid $5 a car for a haul of 421 miles. He gave me the highest compensation I ever received for doing it. He says, "To let them know you are there."

Mr. Norton: Had your superior been testifying before the Interstate Commerce Commission he would have said it was necessary to take that business.

Mr. Peabody: Well, I don't know about that. That was W. P. Robinson, who lives in Washington.

Mr. Norton: Mr. Chambers is objecting to that sort of
1297 testimony.

Mr. Peabody: Well, it was not Mr. Chambers that said that.

Commissioner Prouty: Proceed, gentlemen?

Mr. Norton: Have you a statement showing the cost of the property and the actual financial returns on the Atchison, Topeka & Santa Fe Railroad Company as compared with a legitimate return of six per cent, from January 1, 1906, to June 30, 1909?

Mr. Peabody: I have such a statement, and I want to call the Commissioner's attention particularly to the explanation of this statement, but before doing so——

Commissioner Prouty: What exhibit is this?

Mr. Peabody: Exhibit 20.

Mr. Norton: I don't know what you mean by a legitimate return of six per cent.

Mr. Peabody: Well, I will explain it.
Mr. Norton: You mean a railroad is——
Mr. Peabody: Entitled to six per cent returns.
Mr. Norton: Well, I think it is entitled to a good deal more.
Mr. Peabody: Well, so do I, but this is on that basis.
1298 Commissioner Prouty: In what I have said about the returns a railroad is entitled to on its property I do not wish to be understood as saying that a railroad is not entitled to a fair return on the entire value of its property. I wish merely to indicate what, in my mind, is a proper method of getting at a fair return. If you were entitled to a fair return upon the entire value of your property you would perhaps be entitled to less, taking the whole value together, than if you estimated the return to which you were entitled on your stock. Generally speaking, a stockholder is the one who is interested in the earnings of a railroad. The railroad pays the bonds anyway. But you take the entire property of the Santa Fe, and there can be no safer investment. Up to a certain point it is always certain to pay something. It is just as good as a government bond up to the three per cent basis. Now, the amount of money which the railroad is entitled to earn depends very much on the character of the investment. You can sell a government bond on a three per cent basis, or a municipal bond on a four per cent basis; but there is no risk in that, and, to a certain extent, there is no risk in your business.
Mr. Norton: Well, we were washed out one year——
1299 Commissioner Prouty: Well, you haven't been washed out, the whole Santa Fe road. But taking the Union Pacific as a whole, there can be no safer investment, up to a certain point. It is only beyond a certain point that the uncertainty comes in. So, if you take that property as a whole, you are entitled to earn a less return than you would be if you were estimating the return to which you are entitled merely upon your stock. That is what I intended to say.
Mr. Norton: Well, Mr. Peabody will get at the value of the Santa Fe as a whole, and also as to its securities.
Mr. Peabody: Before starting that, however, I want to correct an impression which was inadvertently made, I think, by counsel on the other side in the statement of the annual report. He said that Mr. Ripley stated in that annual report that he had $33,000,000 cash on hand and didn't owe a dollar.
Mr. Call: He said you had borrowed it for this occasion. It is outside of the bonded debt.
Mr. Norton: Who said we had borrowed it?
Mr. Call: Your counsel or somebody said perhaps you had borrowed that money.
Mr. Peabody: Now, that would create the impression that that was our profit. The fact is that Mr. Ripley said that neither this company nor any of its auxiliaries has any notes or bills outstand-
1300 ing. That is a very different thing from owing money. We owe a great many million dollars. He also said we had $30,000,000 cash in the treasury, and some mortgage bonds that

were not disposed of; and a little further down, on page 16, where that statement of their appears——

Mr. Norton: Page 16 of what?

Mr. Peabody: Of the annual report for 1909. You will find that during that year we had sold off stock and received cash amounting to $28,258,000, which composed a very large part of that $30,000,000.

Mr. Norton: Now, go on with you- exhibit 20.

Mr. Peabody: This statement is an actual statement of the value—of the cost of the property of the Santa Fe road and some deductions thereon. On the 1st of January, 1896, the property of the road was bought by the present organization for $271,000,000.

Mr. Norton: Shown in the first column?

Mr. Peabody: Shown in the first column, in the first item.

Commissioner Prouty: How was it paid for?

Mr. Peabody: That was turned over by the re-organization committee.

Commissioner Prouty: How was it paid for?

1301 Mr. Peabody: By the issue of bonds.

Commissioner Prouty: You mean by that that you issued the $371,000,000 in bonds at that time?

Mr. Peabody: Well, I have not in mind now the re-organization plan, but that was the cost of the property as accepted by the present organization, and its obligations are out therefor on the basis of that cost.

Commissioner Prouty: Well, it doesn't cost much to print obligations, you know. What we ought to know is how much money this property cost—how much money went into it.

Mr. Peabody: Well, nobody can tell how much money went into that property beforehand. I should imagine that the amount of losses made by the stockholders of that company up in New England alone would amount to a great deal more than that. A great many people in New England went into that property with a great deal of money they never got out of it.

Commissioner Prouty: Well, I didn't want to intimate that your column showing this was not right, but I simply wanted to ask how you got at that. You say the property was turned over to the present organization for $371,000,000?

Mr. Peabody: $371,000,000.

Commissioner Prouty: Now, my question is if you know

1302 how the present organization paid that $371,000,000.

Mr. Peabody: No, I don't know. It issued its obligations therefor, but just the details of it I don't know now.

Commissioner Prouty: And you don't know what was paid for the stock or bonds in money?

Mr. Peabody: I could give you that. I know the stockholders were assessed, and they received on the new stock a share of the new stock for every share of old stock, and they received preferred stock for the amount of their cash assessment. That is the way the company was re-organized, some of the bonds were scaled that were out so that the sum of the bonds remaining outstanding, the sum of

the common stock which was re-issued in lieu of the old stock and the sum of the preferred stock which was issued for the cash assessment altogether aggregated the purchase price of the bonds.

Commissioner Prouty: And this first column shows the capitalization of the road?

Mr. Peabody: The capitalization of the road on that date. It doesn't show the capitalization of the road since that date. It shows the cost of the property since that date, arrived at by adding each year the actual amount expended in additions and betterments to the road.

1303 Mr. Norton: All the following numbers, except the first one, $371,000,000, which he assumes was the price paid for the property on the re-organization—all of the following show the amount of money actually put in. I can't answer your question as to what the first number is. I think that this was the price at which the old property was sold at foreclosure, and I believe there was some money paid for it.

Mr. Peabody: Oh, yes, that was the price paid for the property, whatever it was, but how it was paid I don't know.

Mr. Norton: Then for 1897, 1898, 1899, et cetera, it shows the actual cash the new company put into the property to make it better?

Mr. Peabody: I don't think anyone will claim the $371,000,000 was an excessive price for the property. It was really a very low valuation at that time.

Mr. Call: Well, it sold under the hammer at two or three million dollars, didn't it? You bid it in for that?

Mr. Peabody: I don't know the details. Of course that carried with it the obligations that were out upon it. But the subsequent figures are the yearly amounts added to the original figure—the subsequent figures in that column are the yearly amounts added

1304 to the additional figures which were actually invested in the property itself by additions and betterments, reaching a total cost of the property on June 30, 1909, of $527,000,000 and odd. Now, the next column shows the net operating income less taxes for each of those years; and just opposite the percentage which that net income bore to the cost of the property. The per cent which we earned on the cost of the property the first six months was 1.31 per cent, and if you will look down that column you will find that with three exceptions we failed of earning six per cent—we have failed up to the present time of earning six per cent any year. In 1906 we earned exactly six per cent; in 1907 we earned 6.55 per cent; in 1909 we earned 6.39 per cent; but our average earnings for the entire time from 1896 to 1909 only averages, on the actual cost, 4.66 per cent. Now, our next column shows——

Commissioner Prouty: That is not less taxes?

Mr. Peabody: That is not less taxes.

Commissioner Prouty: Now, why did you take out the taxes?

Mr. Peabody: Well, if it was not for the ruling of the Commission that taxes are not an operating expense they would have been put into the report as operating expense.

Commissioner Prouty: Well, in determining the return upon

property to which the investor is entitled you take out the taxes?

1305 Mr. Peabody: Certainly.

Commissioner Prouty: Now, up in New England, if I lend money, or in my own state if I loan money at six per cent I am obliged to pay taxes on that, which reduces the net income to me to about four and a half per cent. If I own a share of banking stock I get a dividend of six per cent and I am obliged to pay out from one to two per cent taxes. Now, in the case of your railroad the taxes are paid, so that, comparing the return of your road with the return of a bank, the taxes should really be counted in.

Mr. Peabody: Well, I am not making such a comparison.

Commissioner Prouty: Well, I simply want to call attention to the fact that that is what you are doing.

Mr. Peabody: Yes, the taxes are taken out.

Commissioner Prouty: You are taking out the taxes, so that yours is a net return?

Mr. Peabody: Yes, and it is so stated at the head of the column, that the taxes are taken out.

Commissioner Prouty: Do you know about what per cent of the investment the taxes amount to? Have you ever made that computation?

Mr. Peabody: Yes, I have made it a good many times, but I haven't it in mind. It varies in different sections. Here

1306 it is on the gross income, is it not?

Mr. Norton: There is a constitutional amendment that we pay taxes of four per cent of the gross income, but that was defeated, but the state board has for several years been using that as a basis. They take our gross income and tax us about four per cent.

Mr. J. H. Call: The state assessment ran about $12,000 to $14,000 a mile.

Commissioner Prouty: Well, of course only a comparatively small part of the Santa Fe property is taxed in the state of California.

Mr. J. H. Call: The record and the reports in the former case show the assessed valuation on the whole of the Santa Fe at that time averaging about $12,000 to $14,000 a mile.

Commissioner Prouty: Proceed.

Mr. Peabody: The next column shows what the six per cent returns—what six per cent return would amount to on that property for each year.

Commissioner Prouty: Now, I think that is all plain, is it not?

Mr. Peabody: And I merely want to call attention to the fact that the difference between the amount that we receive and

1307 the amount of the six per cent return during this period was about $78,000,000. We have failed by $78,000,000 of having received six per cent returns.

Mr. Norton: Our tax commissioner just tells me that the Santa Fe is assessed for $22,000 a mile in California.

Mr. J. H. Call: This year?

Mr. Norton: Yes, sir. Now, the middle column of this Exhibit

20, it seems to me, is an interesting answer in part to your suggestion that there is no risk to the Santa Fe up to about three per cent. In 1907 it earned only 1.51 per cent; in 1898, 2.31; in 1899, 3.40. That is getting perilously near to the danger point there.

Commissioner Prouty: Well, on the average for thirteen or fourteen years it has earned almost five per cent and paid its taxes.

Mr. Norton: Yes.

Commissioner Prouty: Now, it seems to me a property which does that is just as good security as anything possibly can be up to a certain point. Of course it would not be security for the whole value of the property as estimated here, $5,000,000.

Mr. Peabody: It is very good security for a man to invest
1308 money in as a bond proposition, but you would not like to invest your money on that basis as a stockholder.

Commissioner Prouty: If you would wife out your bonds so that my stock entitles me to an interest in the property I would be very glad to invest on that basis; but if you are going to put a bond on your property which is the value of the property and ask me to invest in that stock that is a different proposition.

Mr. Peabody: That is true, but it is admitting the capitalization of the Santa Fe road, including the stock and bonds, both, are less than it could be reproduced for today.

Commissioner Prouty: Your common stock sells for how much in the market?

Mr. Peabody: Well, that is not any indication of its value. That shows the speculative interest is a great deal stronger than the investment interest.

Mr. J. H. Call: I thought you said awhile ago that nobody knew what the property originally cost.

Mr. Peabody: I did, but we know what it cost the present company.

Mr. Norton: My point is that even if we had 4.66 per cent
1309 for the entire time, that is infinitely less than what was held to be due to the Gas Company in New York City, which had no risks, which had a monopoly of the consumption, and which had a constantly increasing business from year to year. It was held to be entitled to six per cent without risks of any sort such as surround us on every mile of our line.

Mr. Norton: Now, passing from Exhibit 20, I will ask you to state if you have a memorandum showing the comparative cost of various classes of railroad material based on actual contract figures for the year 1897, 1903, 1906, 1908 and 1909, respectively for the A. T. & S. F. System?

Mr. Peabody: Exhibit 21 is such a statement, and is shown here simply for the purpose of indicating how the expenses of the railroad company have increased in connection with the articles it has to buy. We all know how the wages have increased, and this is also to show how the material has increased in cost.

Commissioner Prouty: This shows the percentage of increase comparing 1909 with 1903, in the last column?

Mr. Peabody: Yes, sir.

Mr. Norton: Is there anything here which shows the percentage of increase comparing 1909 with 1897?

Mr. Peabody: No, I think not. But the price is given in
1310 each column. This table was prepared for another case.

Mr. Norton: Now, what is the price for ties—that is 18 cents a tie, is it?

Mr. Peabody: 18 cents a tie, and there is an error, and the third item should be hewn oak instead of hewn pine ties. These are merely the prices we pay, and show how the material has increased.

(The various statements from which witness had been testifying, numbered 1 to 21, incl., were received in evidence and marked Defendants' Exhibit No. 50, received in evidence March 29, 1910, witness Peabody, and same are attached hereto.)

Mr. Norton: Have you a statement showing the comparative cost of handling a ton per mile or the actual cost of handling a gross ton per mile on your system in 1900 as compared with 1909?

Mr. Peabody: We hadn't commenced that compilation 1900. I could give you that from 1903, I think.

Mr. Norton: That is to say, you could show us how the cost of handling a gross ton per mile today on your road compares with 1903?

Mr. Peabody: Although I am afraid the 1903 figures are not entirely dependable. You will understand that on a large system like the Santa Fe it takes a long time to get any new proposition that works accurately, and although we did commence in 1902 and in 1901, on this system of analysis of costs, we did not succeed in getting the information to a sufficiently accurate basis to be called dependable, until perhaps 1904. We have in 1903—I think
1311 we have it in 1902, but I would not rely on that at all. For instance, in 1902, the gross tons were arrived at from the wheel reports and the wheel reports were made by taking the tons loaded on a car, which is tacked on the outside of the door, and the way that was arrived at was by a man going along the car and guessing what was in it and what the weight was. You could imagine it was entirely unreliable. But now our process is that the weights are taken from the actual waybills themselves, so that there cannot be any question as to the accuracy of the amount. It has taken us a good while to accomplish that thing.

Commissioner Prouty: Have you ever tried to get up any statistics on some such basis as this; excluding all towns of 10,000 people, for example, and determining the amount of money that you pay out in those towns and outside of those towns compared to the value of your property outside and inside of such towns? Did you ever try doing anything of that kind?

Mr. Peabody: Not exactly in that form. I am engaged at present in an attempt to segregate terminal costs, terminal expenses from the transportation expenses, that will include the amount of expenses at the station, if that is what you mean.

1312 Commissioner Prouty: That is practically what I mean. But I believe it would be very instructive if we knew what

portion of the value of a railroad is embraced within towns of 10,000 people and over.

Mr. Peabody: The value of the terminal facilities?

Commissioner Prouty: Yes, and what portion of the total expenditures are paid out to people whose activities are within towns of 10,000 people.

Mr. Peabody: Oh, we have never attempted anything of that kind. It would involve the traveling over the line and making the valuation in the towns. It couldn't be done in any other way.

Commissioner Prouty: You are not engaged in valuing your property at this time?

Mr. Peabody: Our engineers are making up reproduction costs.

Commissioner Prouty: Why don't your engineers when they are making up that reproduction cost keep the figures in such a way that they can segregate town property from country property?

Mr. Peabody: Well, they would have to determine how much of the yard—well, they could take the whole yard. Perhaps I will be able to work that out in my report. I will look it up and

1313 see.

Commissioner Prouty: It seems to me that when you determine the cost of handling this orange traffic you must have figures of that sort.

Mr. Peabody: I don't see how the orange traffic varies from other traffic.

Commissioner Prouty: It varies from other traffic in this, that it begins here on the Coast and travels 2,000 miles, and it ought not properly to be charged with terminal expenses over twice at least, if over once. It originates in a small place where the terminal expense is slight. How many towns of over 10,000 does a car of oranges necessarily go through?

Mr. Peabody: Quite a number.

Commissioner Prouty: Between here and Chicago?

Mr. Peabody: Quite a number. I don't know how many.

Commissioner Prouty: When it goes through a town like Kansas City why should it be charged with the expense of your company at Kansas City?

Mr. Peabody: It is not. It is charged with the cost of handling through Kansas City, which is a dollar and some cents a car.

Commissioner Prouty: How do you get at that, the actual

1314 cost of handling all the traffic, or the orange traffic?

Mr. Peabody: All the traffic. Take the number of cars and divide by the expense of the station.

Commissioner Prouty: That includes your terminal expense at Kansas City?

Mr. Peabody: Yes.

Commissioner Prouty: While it may be true that this traffic goes through Kansas City, that is a matter of convenience. It might as well go around.

Mr. Durbrow: If your Honor please, this traffic moves through these different large stations, and it is held at many of these stations for diversion purposes.

Commissioner Prouty: Yes, in some cases.

Mr. Peabody: If it goes to Kansas City and takes the full terminal expense, which is very large——

Mr. Norton: If this and all other traffic were to run around Kansas City what traffic would maintain the facilities there?

Commissioner Prouty: The traffic that goes there. I understand that this fruit is charged with its proportion of your terminal facilities in every town that it goes through, whereas it ought not to be that way. It ought to be charged with two stations only,
1315 here and at the other end, except for the matter of diversion.

Mr. Norton: In the matter of taxation the Supreme Court held that we can't segregate the different miles of a railroad, and say that this mile is of a certain value and that mile is of a certain value. The thinnest mile is as important and as necessary as the most costly mile of terminal.

Commissioner Prouty: I am unable to see why this traffic, if it originates here, for example, and goes to the Missouri River, should be charged with your terminal facilities in Chicago.

Mr. Peabody: It is not.

Mr. Norton: Mr. Chambers makes the suggestion that if we had to run around Kansas City we would have to build another railroad around Kansas City and the citrus business would have to pay for that new railroad. We are using the Kansas City facilities just the same as we use our refrigerator car for ventilating purposes. It is the cheapest and best.

Commissioner Prouty: That is true, and you undoubtedly ought to handle the business through there, and you should be able to handle it through there cheaper than you can build another road.

Mr. Norton: If we use the facilities that we have for that
1316 business then it ought to bear its share of maintaining those facilities.

Commissioner Prouty: That may be true as a whole, but the traffic, originating in California and carried over that 2,000 miles ought not to be charged with what is equivalent to half a dozen terminal facilities.

Mr. Durbrow: We think it should.

Mr. Norton: I think it is to the advantage of the business that it be charged that way. Just as Mr. Chambers suggested about the use of the refrigerating cars, and I think that is a very pat illustration, that while we have to use for ventilator purposes, and for hauling some other freight than fruit, these refrigerator cars, and haul dead weight that way, still it is better to use that car than to haul the refrigerator empty westbound, and bring out a box car and load it instead of loading it in this refrigerator, and then perhaps haul the box car back empty east. And while apparently it is a charge on the citrus business to use the refrigerator car for a ventilator car, still for both the railway company and the shipper it is the cheapest way out. And in like manner it is perhaps the cheapest way to handle the citrus business through the Kansas City yard.

Commissioner Prouty: Undoubtedly it is, and it ought to
1317 be handled through the Kansas City yard.

Mr. Peabody: If you paid the entire cost of the Kansas City terminal on the citrus fruit that — west to Kansas City you would have to advance that rate very materially to make it up.

Mr. Durbrow: If your Honor please, we find here by examining our records, we see orange trains starting out from California with their cars destined to different eastern points. In distributing those cars, in transporting the train to its final destination, say the last car for instance to New York, we are obliged to take that car and the entire train through these different terminals en route, switch that train, segregate the cars, some going north and some south, some east, of course that is all a part of the expense, and of course the entire expense must be borne by the entire train, as I see it.

Mr. Norton: I would like to put on Mr. Kerckhoff before the gentlemen cross examine this witness. He is ailing, and I would like to let him go.

a Interstate Commerce Commission, Washington.

I, John H. Marble, Secretary of the Interstate Commerce Commission, do hereby certify that the record hereto attached contains true copies of the original transcript of the stenographer's notes of that portion of the testimony taken before said Commission on March 29, 1910, at Los Angeles, California, being pages 1318 to 1468, both inclusive, and of that portion of the testimony taken before said Commission on April 22, 1910, at Chicago, Illinois, in the case of Arlington Heights Fruit Exchange and others against Southern Pacific Company and others, docket No. 3000, the originals of which are now on file and of record in the office of tnis Commission.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this 15th day of April, 1912.

[Seal Interstate Commerce Commission, 1887.]

JOHN H. MARBLE, *Secretary.*

1318 W. G. KERCKHOFF was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Norton: You are engaged in the ice business in Los Angeles?

Mr. Kerckhoff: At Azuza.

Mr. Norton: Did you ever have a contract for furnishing ice with the Atchison, Topeka & Santa Fe Railway Company?

Mr. Kerckhoff: Yes, sir, we have a contract now with the Atchison, Topeka & Santa Fe Railway Company.

Mr. Norton: Where do you furnish the ice?

Mr. Kerckhoff: We furnish it at Azuza, Los Angeles and San Bernardino.

Mr. Norton: How long a term contract is it?

Mr. Kerckhoff: It was a ten year contract, and this is the last year of the term.

Mr. Norton: Had you a contract previous to this one?

Mr. Kerckhoff: Yes, sir, for a number of years. I don't know the exact number of years. I think six or seven years.

Mr. Norton: And have you had yourself a long experience in the manufacture of ice?

Mr. Kerckhoff: Yes, sir.

1319 Mr. Norton: Your ice is manufactured, of course?

Mr. Kerckhoff: Yes, it is manufactured.

Mr. Norton: It has been represented here that ice can be provided for the refrigeration of citrus fruits on our railway for $2.25 per ton. And a contract has been—or some correspondence which I presume had better be termed a request for bids, and the bid has been introduced in evidence here, in which the Los Angeles Ice & Cold Storage Company makes this statement, "There will be no obligation on your part to furnish us with any stated amount of business, nor on our side any guarantee of obligation as to the

total amount of precooling and icing we can do." I will ask you to state whether except under a contract of that sort ice can be furnished for $2.25 a ton?

Mr. Kerckhoff: I think not. I think the $2.25 would mean a loss to the maker of the ice. I would like to say that our contract with the Atchison road expired this year, and the question of the renewal of the contract was taken up with us by the purchasing agent of the company, Mr. Hodges, and he offered us $2.85 for the ice for a term of years, which we refused to take, as we considered that would mean a loss to us.

Mr. Norton: The renewal of the contract now expired?

Mr. Kerckhoff: Yes, sir.

1320 Mr. Norton: And you declined to renew it for how long a term?

Mr. Kerckhoff: Well, the term was not definitely agreed upon, but it was to be for a long term of years.

Mr. Norton: $2.85?

Mr. Kerckhoff: Yes.

Mr. Norton: Would that be furnished at Azuza or Los Angeles?

Mr. Kerckhoff: No, that would be to furnish ice at San Bernardino loaded in cars.

Commissioner Prouty: How much have you received at San Bernardino in the past?

Mr. Kerckhoff: $4.

Mr. Norton: How much are you obligated to furnish under your present contract?

Mr. Kerckhoff: All the ice that is required for the use of the railroad for fruit purposes. It is an indefinite amount.

Mr. Norton: You undertake to furnish all that may be required?

Mr. Kerckhoff: At that price, yes, sir. And I will say this, that the difficulty in furnishing ice under such a contract is the indefiniteness of the amount. It cannot be ascertained in advance how much ice will be used, and you can't change the size of the plant from one year to another to provide for such indefinite quan-

1321 tities, and the shortage will have to be supplied from other factories, either that or ship in natural ice.

Mr. Norton: Sometimes you have to run the plant to full capacity, and other times you have ice left on your hands?

Mr. Kerckhoff: Yes, sir. We had to ship at a very heavy cost in a number of years ice from the north.

Mr. Norton: From what points in the north?

Mr. Kerckhoff: Well, we obtained this ice from the Union and National Ice Companies. I suppose it came from Truckee.

Mr. Norton: What do you charge off for depreciation on the ice plant per annum?

Mr. Kerckhoff: We have no regular depreciation charge, but I should say that six per cent would not be an unreasonable charge for depreciation.

Mr. Norton: What would be the cost of making ice on a contract for a maximum of 40,000 tons a year?

Mr. Kerckhoff: If a definite sale was made for 40,000 tons a

year, it could be furnished at $2.50, and probably pay a small margin of profit, because you work under the best advantages. That is, I mean delivered right at the factory.

Mr. Norton: Oh, delivered at the factory?

Mr. Kerckhoff: Yes.

Mr. Norton: I mean put into the bunkers of the car. Are you putting the ice in cars under your present contract?

1322 Mr. Kerckhoff: Yes, sir.

Mr. Norton: I mean put in the bunkers of the car.

Mr. Kerckhoff: We have contracted to put that ice in the bunkers at thirty cents a ton, so that is what ought to be added to that price.

Commissioner Prouty: Have you seen the new plant of the Santa Fe at Colton?

Mr. Kerckhoff: No, I have not.

Mr. Call: How far were you apart on your new contract?

Mr. Kerckhoff: We didn't exactly get down to that. Mr. Hodges had made up his mind that he wanted to pay $2.85, and we couldn't come down to that. I think that about $3.25 or $3.40, in the quantities that he uses now would be a fair price.

Commissioner Prouty: Suppose, Mr. Norton, that the average price of your ice, which has been $3.85 in the past, perhaps, and to be in the future not to exceed $2.50, after all allowances have been made for depreciation and everything else, what effect ought that to have on your refrigeration charges? Should you have the benefit of the saving in the price or the shipper?

Mr. Norton: According to Mr. Chambers' testimony, and I put him on expressly to show that, the original refrigeration charge was worked out by him under Mr. Ripley's direction to be

1323 the cost of rendering the service to the people, without any profit on it, and my understanding at the present time is that if by pre-cooling we can furnish the same amount of units of refrigeration, so to speak, at less money, that we would not get that. If you consider the pre-cooling as a part of the icing proposition, which is a new way, we will say, of icing, any reduction that can be made by pre-cooling or by getting better ice contracts would go in at cost, as we think it has always been at cost.

Commissioner Prouty: That is to say, if it costs you less for ice it would involve a reduction of the charge?

Mr. Norton: Yes.

Mr. Durbrow: That is the position that the Southern Pacific assume; that if we can furnish this refrigeration by means of pre-cooling at a less cost, the shipper will get the benefit.

Commissioner Prouty: It is not entirely a question of pre-cooling. The Santa Fe pay on the average of $4 per ton for ice this year. In previous years $3.85. It paid for example here at San Bernardino $4. The Santa Fe has erected a plant which will enable it to manufacture that ice and put it into the bunkers, leaving out the pre-cooling apparatus entirely, for probably $2.50 a ton at the outside. Now, if that be so, if it be so all along the line, should

1324 the refrigeration charge be reduced by virtue of the fact that you have made that saving in the cost of the ice?

Mr. Durbrow: As I understand, we regard the pre-cooling proposition merely as a part of the refrigeration, as one entire service, whether the pre-cooling and icing taken together make a lower cost, or whether the icing on straight refrigeration makes a lower cost, I understand that it is the aim and purpose and intention of the traffic department to give the shipper the benefit of that.

Mr. Norton: We are just trying to find out about this $30 rate. It was merely an estimate that was put on the service to give them a chance to follow up their dreams and expectation.

Commissioner Prouty: You don't render any additional service there, except you haul some more ice. But your earnings per gross ton would probably be greater.

Mr. Norton: The $30 charge, that whole matter is in the experimental stage, as far as we are concerned. We don't know what it should be yet.

Commissioner Prouty: Just one or two more questions. You spoke of six per cent depreciation per annum. That means the cost of maintaining the plant. That does not involve in any
1325 way the value of the plant which you may have no use for at the end of your fifteen year contract.

Mr. Kerckhoff: I consider that in addition to the necessary maintenance, charges for keeping the plant in repair, that six per cent is not an unreasonable charge for the reason that there is such a thing as obsolescence to be provided for in the plant. Anything in the manufacturing line depreciates very rapidly. Outside of the actual wearing out of the machinery there is obsolesence of the plant to be taken into consideration, and I think that for plants of that kind six per cent would be a reasonable charge.

Mr. Call: At some stage of the proceedings, perhaps just as well now as later, I wanted to get a little understanding in behalf of our people; we might just as well do it now, because it is short, and that is this: That, as the Commission has observed, and we think wisely, this refrigeration question is not altogether settled. And we think—and our people have had long experience; a good many of them have been at it twenty years, have been trying these different methods of preserving fruit all the time. And we have tried to get as good men as the country produces along that line of work. We have had quite a large experience at these two plants. This year we can enlarge our experience very materially. With the
1326 consent of the road and the advice of the Commission we can put out probably thirty to forty cars a day through the Los Angeles plant and our plant, and under this tariff that they have issued, allowing us to do this on the $30 charge, we can pay the $30 under protest and keep on that way until the Commission determines the matter, and we can get pretty accurate figures during the next two or three months. We can have the fruit under close observation in the cars and find out definitely how they carry by that method. If they do carry, as we believe they will, and as our experience shows us the will, if they do carry that way the railroads can do the same thing and save us the trouble of putting up all these plants, and we are willing to allow them a reasonable compensation on their expense. In addition to that——

Commissioner Prouty: I think we will have the balance of the testimony and then we will determine what is to be done with reference to the refrigeration and so forth.

Mr. Norton: This six per cent that you spoke of, does that include interest on the cost of the plant?

Mr. Kerckhoff: No.

Commissioner Prouty: It has been testified that one fifteenth ought to be charged up for depreciation each year on the theory that in fifteen years it would not be good for anything. That is what you mean?

Mr. Kerckhoff: Yes, it is in addition to the ordinary main-
1327 tenance charge.

(A document was received in evidence and marked Defendants' Exhibit No. 50, witness Peabody, and same is attached hereto.)

JAMES PEABODY, having previously been sworn, was recalled for further examination, and testified as follows:

Cross-examination.

Mr. Call: You devote your time very largely to the preparing of these statistics?

Mr. Peabody: Yes, sir, I have charge of the department in which they are prepared.

Mr. Call: And that is a regularly organized department for the purpose of preparing statistics for the use of the company itself?

Mr. Peabody: Yes, sir.

Mr. Call: And also for use in these various hearings?

Mr. Peabody: Yes, sir.

Mr. Call: And when a hearing of this kind comes on, and a rate is questioned, it becomes the duty of your department to produce a set of figures showing that that particular commodity either deserves a raise or does not deserve a decrease in rate?

Mr. Peabody: No, sir. It is my duty to produce facts.

Mr. Call: You have had many of these hearings?

1328 Mr. Peabody: Several.

Mr. Call: And in all of them you have succeeded in demonstrating that the rate in question was not compensatory?

Mr. Peabody: No, sir. In this hearing itself I have shown one rate that shows a profit.

Mr. Call: No matter what rate it is that is called in question you have been able at all times to demonstrate that it has been compensatory?

Mr. Peabody: I said no, I have not made any such report.

Mr. Call: You testified, didn't you, in the Missouri passenger rate cases?

Mr. Peabody: Yes.

Mr. Call: You showed there to the satisfaction of the court that it was not compensatory?

Mr. Peabody: That was the easiest proposition in the world.

Mr. Call: And you testified that you made your money on the interstate traffic, didn't you?

Mr. Peabody: I testified that the interstate traffic paid a good deal more money than the state traffic, yes.

Mr. Call: And when it comes before the national commission it is your duty to show that the short haul is what pays?

Mr. Peabody: My duty is to show facts, whatever those facts be

Mr. Call: Did you try in this case to make a fair statement of the facts? A fair and just statement, or just something——

1329 Mr. Peabody: I testify under oath.

Mr. Call: I know, but have you tried to make a fair statement of the facts?

Mr. Peabody: Absolutely.

Mr. Call: I notice here that you have in all these computations in which you have figured out that you are carrying the citrus business at a loss, you have charged the business with all this dead freight, extra tare on the basis that it should be a revenue producer, have you not?

Mr. Peabody: No, sir, I have stated——

Mr. Call: You have apportioned the cost, your operating cost to the dead freight, have you not?

Mr. Peabody: I have apportioned the operating cost on the total loads that we haul.

Mr. Call: Yes, on the total tonnage, gross tonnage?

Mr. Peabody: Certainly.

Mr. Call: This is about the situation, then. That these railroads have for a great many years been furnishing equipment suitable for this perishable commodity, refrigerator and ventilator equipment, suitable for carrying the commodity in a reasonably safe way and with reasonable time to the market, that is, equipment that would stand a heavy strain, reasonably fast service, and carry the stock reasonably free from weather conditions. That is correct, is it not?

1330 Mr. Peabody: I imagine.

Mr. Call: Necessary equipment for the business?

Mr. Peabody: Yes, sir.

Mr. Call: It is a business that could not be handled in box cars. The business would be killed if you tried to put on box-car or flat-car service, wouldn't it?

Mr. Peabody: Certainly.

Mr. Call: Now, then, having the actual cost of transporting that extra weight of equipment the basis for figuring your profit or loss you take that extra weight you necessarily use in building up this business and charge it here on a revenue basis, do you not?

Mr. Peabody: No, sir.

Mr. Call: You can tell us, of course, what it costs to transport a car, flat-car, ordinary loaded car, a mile, can't you?

Mr. Peabody: Yes.

Mr. Call: What is it?

Mr. Peabody: I can tell the average cost.

Mr. Call: I mean the actual transporting expense.

Mr. Peabody: What do you mean?

Mr. Call: For instance, leaving out every item which the extra weight in the car does not increase. For instance, the extra
1331 weight in that car does not increase your President's salary, or yours?

Mr. Peabody: No.

Mr. Call: It does not increase the interest on your bonded debt, that is a fixed charge?

Mr. Peabody: Yes.

Mr. Call: It doesn't increase the taxes any, does it?

Mr. Peabody: No.

Mr. Call: Nor does it increase the expense for maintaining the tracks?

Mr. Peabody: Yes.

Mr. Call: Does it increase the track maintenance?

Mr. Peabody: Yes.

Mr. Call: Does it increase the wages you pay your telegraph operators or station agents along the line?

Mr. Peabody: Now you are getting into a realm that I cannot answer. I don't know. I think possibly in some cases it does. If you will tell me just what items you wish calculated——

Mr. Call: I mean every item that you think is increased by that dead weight in the car.

Mr. Peabody: I can't tell you all the items.

Mr. Call: Say for instance a railroad company undertakes to haul a car for instance, with fifteen tons net revenue, freight, in
1332 it. And instead of using a car that weighs twenty tons it uses a car that weighs twenty-four tons, which is four tons extra weight in that carload. I would like to have your idea of what items of expense are increased by reason of the carrying of the extra four ton.

Mr. Peabody: I don't think I can give that to you.

Mr. Call: You don't think you can?

Mr. Peabody: No.

Mr. Call: Do you know from any tests you have made what the actual cost is per mile of hauling one of these orange trains, including your engine expense, per diem on your train men, the oil that you use, the fuel, your actual train expense for hauling that train, outside of the fixed expenses, expenses that you naturally incur on all your business?

Mr. Peabody: I can tell you what it costs for conducting transportation. I can tell you what it costs for engine men, what it costs for train men, what it costs for fuel, what it costs for various other subdivisions.

Mr. Call: You mean by taking your per cent of haul you have it fixed in your reports?

Mr. Peabody: No, I mean the actual cost.

Mr. Call: Give me the items of that actual cost first before you give me the figures. Then we will see how valuable it is.

1333 Mr. Peabody: What do you mean?

Mr. Call: I want to know just the actual expense of transporting that train.

Mr. Peabody: What items?

Mr. Call: All the items.

Mr. Peabody: I can't do that.

Mr. Call: What items do you consider in transporting cost?

Mr. Peabody: I don't consider, because I don't know. I can't segregate all the items exactly.

Mr. Call: Will you give me those that you can segregate as proper items of expense?

Mr. Peabody: I can give you any item of expense——

Mr. Call: That is your business. You ought to know. You can give them to us. Give me what you regard as being proper items of transportation expense.

Mr. Peabody: I have not made up my mind as to what those are. I have not attempted to segregate those.

Mr. Call: Don't your company keep any of that class of records? Don't they have any tests or records at all of what it costs to carry a train a certain distance?

Mr. Peabody: What you would call the actual movement expense?

Mr. Call: Yes.

Mr. Peabody: No, sir.

1334 Mr. Call: They don't keep them at all?

Mr. Peabody: No.

Mr. Call: Haven't you made any estimate or don't you use any basis for that computation?

Mr. Peabody: No, sir.

Mr. Call: Not at all?

Mr. Peabody: No, sir.

Mr. Call: Your general officers have not ordered a train run and expense account kept to run that train?

Mr. Peabody: I think not. I have determined the actual movement expense.

Mr. Call: Suppose the president of the road should ask you to give him the actual expense of moving a train of oranges from Los Angeles to Chicago.

Mr. Peabody: Yes.

Mr. Call: Wouldn't you undertake to give it to him?

Mr. Peabody: No, sir.

Mr. Call: You would not undertake to give it to him?

Mr. Peabody: No.

Mr. Call: You have nothing whereby you could give him that expense?

Mr. Peabody: No.

Mr. Call: If the Court please, I asked in the beginning

1335 for *for* a subpœna for Mr. Kendrick, whom I believe has some of this data. In fact I have his letter here to the general manager giving that exact item. "The average earning ca-

pacity per car mile as shown by last year's figures, is 12.7. Average cost to haul a loaded car one mile is about 3½." Now, I asked for Mr. Kendrick, because I have reason to believe that he has some of these figures. Counsel on the other side promised that they would have a man here to testify, and I waived their calling Mr. Kendrick here, because they promised to have a man, I understood that it was Mr. Wells, but he is only a division superintendent, or western manager, and then they told me that Mr. Peabody would answer anything. Now, he don't know anything about this most important point. They ought to have a man here that would give that.

Mr. Peabody: He don't know anything about it that I don't know. Those figures in that letter I gave to Mr. Kendrick.

Mr. Call: How did you get them?

Mr. Peabody: That is not what you asked. You ask for the actual movement cost. You didn't ask for the average cost per mile.

Commissioner Prouty: Can you give the actual cost per train mile?

Mr. Peabody: Yes, I can give the average cost per train mile.

Commissioner Prouty: That is, the cost to move it?

1336 Mr. Peabody: No, not the cost to move it. The total operating cost per train mile; or transportation cost per train mile, or any other particular cost that way can be determined, but when you come to the actual expense, how can I determine how much wear and tear there is on the——

Commissioner Prouty: That is not part of the movement expense, it is part of the maintenance.

Mr. Peabody: It is caused by the movement of the train.

Commissioner Prouty: Yes, certainly.

Mr. Peabody: Your repairs to the car go into the movement of the train.

Commissioner Prouty: When you give the train expense of the car mile expense you simply arrive at that by taking the number of miles which your cars have traveled and dividing that into your total expense of a certain kind?

Mr. Peabody: Yes, sir. I can give him that for any subdivision he wants.

Commissioner Prouty: That would include the cost of switching and all the expense of that kind?

Mr. Norton: This request for information I turned over to Mr. Peabody and asked him to prepare, and I think he has prepared, so far as our records will permit, data answering all the questions.

1337 Mr. Call: I have no doubt of that, but the point is this. I know from my own personal knowledge that the general officers of a railway company have figures showing what it costs to handle freight in various ways, and I think that your road has it; test runs, and private computations by which they inform themselves about the cost of this service in order to judge as to the reasonableness of a rate. I wanted to draw that out from your general

officers. I don't think any subordinate knows it. Unless Mr. Peabody has it we want Mr. Kendrick.

Mr. Peabody: Mr. Kendrick has no figures except what I gave him.

Mr. Call: How did you get at this: Three and a half cents, what do you mean by that? "Average cost for hauling a loaded car one mile is about three and a half cents."

Mr. Peabody: That is the loaded car miles divided into the total expense.

Commissioner Prouty: How is that, Mr. Peabody?

Mr. Peabody: The loaded car miles divided into the total expense.

Commissioner Prouty: What is embraced in that expense?

Mr. Peabody: Maintenance of way and structures, yard service, contingencies, other general expenses, the entire operating expense.

1338 Commissioner Prouty: Everything except your taxes?

Mr. Peabody: Yes.

Commissioner Prouty: So the total expense of handling a loaded car is a little over three cents a mile?

Mr. Peabody: Yes.

Commissioner Prouty: And the exhibit shows between here and Chicago how many miles; twenty-two hundred; that is $66 a car. Your statement showed two hundred and eight dollars a car.

Mr. Peabody: Yes, sir, the load divided into the total expense for that particular item of expense whatever it may be. I don't know what that was. If you will let me see it. It has been a long time since I saw it. I know he must have got the figures from me, however.

Commissioner Prouty: My belief, Mr. Peabody, is that this movement cost does not include your maintenance of way.

Mr. Peabody: I think it is transportation cost. The average cost of hauling a loaded car one mile is about three and a half cents. I think that was transportation cost, which embraces station employés, station supplies and expenses, yardmen, switchmen, yard supplies, yard engine men, engine house expenses, fuel for yard engines, supplies for yard locomotive, engine house expense, fuel for road locomotive, water for road locomotive, other supplies for road locomotive, road train men, train supplies and ex-

1339 penses, despatching train, telegraph, telephone service, all those things that go into what is known under your classification as conducting transportation.

Mr. Call: Which of those items do you think it would be right to say are increased by reason of carrying this extra four ton?

Mr. Peabody: Fuel for road locomotives.

Mr. Call: Yes, we will agree to that.

Mr. Peabody: Water for road locomotive. Other supplies for road locomotive. And the same thing would apply to yard locomotive that handle the cars.

Mr. Call: Yes, count that.

Mr. Peabody: I don't know as to whether there would be anything else for that extra four tons segregated from anything else.

Mr. Call: That is very nominal, then?

Mr. Peabody: Well, yes.

Mr. Call: When your people are figuring on the proper rate for a commodity to be carried in those cars, they would not actually go to work and expect that the shippers of that commodity were going to pay regular revenue rates on that extra tare weight, would they? They would figure what it would cost them — carry this larger car?

1340 Mr. Peabody: The rate department is better able to tell you what they figure in making a rate than I am. I have not been in the rate department for about fifteen years.

Mr. Call: But you can't see any particular reason for asking the shipper to pay regular revenue rates on your extra weight of a car, can you, simply because that car necessarily carried that commodity, when it didn't cost the road much of anything to carry it?

Mr. Peabody: No.

Mr. Call: It is almost too small an amount for you to compute, isn't it?

Mr. Peabody: Yes, it would be very small.

Mr. Call: So that when you attempt to figure up here your loss on your lemon and orange traffic, if you should take that basis of computing your cost it would bring quite a different result, wouldn't it?

Mr. Peabody: I don't know what the result would be on that basis.

Mr. Call: You are not employed to figure on that basis?

Mr. Peabody: No, sir, it would be impossible to figure it on that basis. I would like to be able to. We can't find out what any particular commodity costs to handle, but only the average cost to handle all commodities.

1341 Mr. Call: Now, do you know Professor Logan McPherson?

Mr. Peabody: I didn't know he was a professor. I know him.

Mr. Call: You prepared for him this statement?

Mr. Peabody: No, I didn't prepare a statement for him. I gave him a statement. I don't know where that statement is.

Mr. Call: You would recognize it if you saw it?

Mr. Peabody: No, sir, I never saw that statement before, or anything like. (Handing paper to witness.)

Mr. Call: Didn't you give him the facts upon which it is made?

Mr. Peabody: I don't know what facts it is made on. There is no indication there of what facts it is made on.

Mr. Call: Isn't that a statement of the Santa Fe road?

Mr. Peabody: Does it say so?

Mr. Call: Do you deny it?

Mr. Peabody: I don't know whether it is or not.

Mr. Call: You know the Santa Fe road as well as a boy knows the road to school. You can tell whether that is a Santa Fe road statement.

Mr. Peabody: No, I don't remember all the figures we make on the Santa Fe road. I gave Mr. McPherson a statement showing the earnings on each commodity.

Mr. Call: That is what that is.

Mr. Peabody: I should judge from the commodities here——

1342 Mr. Call: —that that is the one you gave him?

Mr. Peabody: It has the same number of commodities we had, in the same order. I don't know of another road that uses that basis, but the only figures I gave him were the figures in that first column. Where he obtained the second I don't know.

Commissioner Prouty: His second figures are about like yours.

Mr. Peabody: That may be, but I certainly did not furnish him anything but that first column.

Mr. Call: How could he get that statement from you——

Mr. Peabody: Like most of those writers, they do an immense amount of guessing.

Mr. Call: So far as you fished out these commodities that you wanted to compare oranges and lemons with, this statement agrees.

Mr. Peabody: It is exact. That is merely our published statement for the year, I presume.

Mr. Call: But it is peculiar in this, isn't it, that so far as it covers the items that you reported here, your table that you furnished us, they are the same; the only difference is that there are other items that you have not figured.

Mr. Peabody: I don't believe it is the same year, is it?

1343 Mr. Call: No, this is 1907 and yours is 1909.

Mr. Peabody: Yes.

Mr. Call: But in taking up that statement where could Logan McPherson have secured the data for instance on the computation on the weight of a car——

Mr. Peabody: He guessed at it. The only way he could get at it was to guess at it. He certainly couldn't get it from me. Most anybody can guess at the weight of a car more or less accurately.

Mr. Call: But in figuring up this table you presented to the Commission, you figured up the commodities there that you thought showed better than the citrus traffic——

Mr. Peabody: I figured up every commodity that has been handled.

Mr. Call: What?

Mr. Peabody: Every commodity included in my statement.

Mr. Call: Turn to that table and let's see if you did.

Mr. Peabody: That is, every commodity as we keep it in the eighty-seven commodities.

Mr. Call: Table eight, products of Agriculture, products of animals, products of mines, products of forest, where have you attempted to show what these commodities would earn for you

1344 if you got paid for the hauling of the car? I don't notice in that sheet there any other perishable commodities that are carried in refrigerated cars.

Mr. Peabody: Because we don't keep track of any that don't pay

five hundred thousand dollars. That statement shows business in excess of five hundred thousand dollars, and the balance is included in "Other Agricultural Products" which embraces all those that don't amount to that much. Everything that is handled that does not pay a half a million dollars in a year is included in "Other Agricultural Products," embracing every carload that we handle for the entire year, or a total of nine hundred and sixty-three thousand cars.

Mr. Call: What was your idea in using that five hundred thousand dollar division point?

Mr. Peabody: So as to represent those that would more nearly provide the same revenue as citrus fruit. That was four hundred thousand dollars, practically, and I wanted to show the other commodities by name that anywhere approached that, and then I put in all the other commodities as well.

Mr. Call: But you used those other commodities that approached that in point of gross revenue rather than those that more nearly represented the cost of transporting, didn't you?

Mr. Peabody: That don't relate to the cost in any way.
1345 That is revenue. I paid no attention to the cost one way or the other. I simply took the items that paid half a million dollars or over, and then threw the balance under a separate heading together.

Mr. Call: You have avoided in that statement there any direct comparison with other commodities which moved in the same kind of cars?

Mr. Peabody: I did not avoid it. It is in there somewhere. It is included in there.

Mr. Call: You bunched it in with a lot of stuff that moves in ordinary box cars?

Mr. Peabody: All together that don't pay five hundred thousand dollars.

Mr. Call: You segregated these out and bunched all the other stuff that moves in a refrigerator car in with a lot of box car stuff?

Mr. Peabody: If that process had effect of segregating it out, why I did. The intention was not to do that.

Mr. Call: So that the effect of it is that other commodities, such as apples, celery, such stuff as that, that moves in these heavy cars under a low minimum, in order to increase the showing of gross earnings, are combined with a lot of others, agricultural products that move in box cars?

Mr. Peabody: That was not the object of it.
1346 Mr. Call: I know, but that was the effect of it.

Mr. Peabody: Well, if you please. The other agricultural products show a little lower than citrus fruit, not very much. They are aggregated together to make that last amount, which is 4.9 mills, as against the citrus fruit, which is a little lower. Transcontinental dried fruits I have shown as a separate item.

Mr. Call: Now, coming back to your tables I want to ask you a question or two. Take Exhibit No. 2. That is a comparison of Florida lemons?

Mr. Peabody: Yes.

Mr. Call: What is the object of that table?

Mr. Peabody: To show that the California pays less per ton mile than the Florida.

Mr. Call: You know that the Florida lemons are not competitors of ours, don't you? Florida does not produce lemons in a commercial quantity, you know that.

Mr. Peabody: I suppose not.

Mr. Call: The Florida lemon rate has nothing to do with our lemon rate?

Mr. Peabody: It shows what the effect would be of the dollar rate on oranges, shows the effect on the earnings of a
1347 dollar rate.

Mr. Call: The intention of this is to show a competitive proposition?

Mr. Peabody: Competitive proposition.

Mr. Call: With a thing we don't compete with?

Mr. Peabody: No, the rates are the thing we don't compete with.

Mr. Call: Well, we don't compete with the product, do we? Your next exhibit, Exhibit 3, oranges. You have got that carried out there in the box proposition on the basis of eighty pounds to the box?

Mr. Peabody: Yes, the Florida weight.

Mr. Call: That is the Florida estimated weight?

Mr. Peabody: That is the weight under which it is shipped.

Mr. Call: Estimated weight. The actual weight is ninety-eight?

Mr. Peabody: Yes, and they pay freight on it, too.

Commissioner Prouty: No, I don't think so.

Mr. Peabody: You don't?

Mr. Call: I think you are wrong on that.

Mr. Peabody: I can produce a tariff showing that the extra over eighty pounds is charged at the tariff weight, on the Florida weight.

Commissioner Prouty: I think that some one said that the
1348 box from Florida weighs ninety-eight pounds.

Mr. Peabody: It don't make any difference, the estimated weight is—the tariff is based upon eighty pounds, and all extra weight is charged at the tariff rate.

Commissioner Prouty: Who filed such tariff as that?

Mr. Peabody: The Florida tariff shows that. I have a Florida tariff, a copy of the Atlantic Coast Line tariff.

Commissioner Prouty: Filed when?

Mr. Peabody: I don't know that it is filed. I have a copy of it.

Commissioner Prouty: It may be a way they have taken of advancing their rate since we decided the case.

Mr. Peabody: That was before you decided the case.

Commissioner Prouty: Those oranges are shipped entirely on the estimated weight of eighty pounds. They have weighed some boxes and found they did weigh more than eighty pounds and sometimes less. They have the same question down there which you apparently have out here, as to whether they should be shipped by the actual weight or the estimated weight, but the practice in the past has been

to ship those at eighty pounds. They simply count the boxes and charge for the number of boxes.

Mr. Peabody: I can only state what the tariff reads. I supposed they were obliged to fulfil the condition of the tariff, and the
1349 tariff does read, the Atlantic Coast Line tariff, which names the rate from base point, also the originating point, and it has this at the head of the tariff, that extra weight will be charged in. I can give you that. I have it with me. I have two or three. They all have the same provision. I will bring it up after dinner.

Mr. Call: I noticed that your Exhibit 4——

Commissioner Prouty: Even if that were so there is no testimony here to show that a box of Florida oranges weighs ninety-eight pounds.

Mr. Peabody: This exhibit is based upon the estimated weight of eighty pounds and seventy-two pounds, without any regard to the actual weight one way or the other.

Mr. Call: In your Exhibit 4 I notice you have earnings figured on the ton mile basis. Is that now regarded by transportation companies as the proper basis to figure earnings on?

Mr. Peabody: For what purpose?

Mr. Call: For any purpose; to show what you were making or to show what your revenue is or should be.

Mr. Peabody: I don't think there is a railroad company but what its annual report shows what it earns per ton mile.

Mr. Call: That may be true, but I am asking you what is the best recognized method of computing your earnings, whether on
1350 the ton mile basis or train mile basis. What do you use as to the basis to determine what your revenue should be, your rate?

Mr. Peabody: We show it on the ton mile basis.

Mr. Call: All through your work?

Mr. Peabody: No, I show it in my work in a great many different ways, in all of our annual reports. It is a basis that has been used for years and years, ever since the railroad has started, ton mile earnings.

Mr. Call: Don't you sometimes—or usually figure it on the train mile basis?

Mr. Peabody: It is very unusual.

Mr. Call: You don't figure in moving this business what a train would earn from Los Angeles to Chicago?

Mr. Peabody: No, sir.

Mr. Call: I notice here that the earnings of the eastern roads on lemons, their percentage is 5.61 per ton mile, that is, on Buffalo shipments. On Oranges, 6.43. Some witness said they were objecting to the rate. Isn't that above the average earnings of the eastern roads?

Mr. Peabody: What roads?

Commissioner Prouty: Well, not on that kind of business. They might very well object to the rate, because if they carry these
1351 lemons from Chicago to New York at that rate, they are, of course, able to bring lemons from New York to Chicago.

Mr. Call: Yes, I understand that, of course, but on the revenue basis is the point I was getting at, on the revenue basis, leaving out of consideration their desire to foster the foreign lemon business, on account of their westbound traffic, isn't this really a compensatory rate that they are getting compared with the other rate?

Mr. Peabody: My memory, which of course is not to be depended upon in this case, I should say the Pennsylvania Lines and the New York Central Lines both, which are the best lines out of Chicago, I think their average earnings are something more than seven and a half mills. That is my impression.

Commissioner Prouty: I think it is less than six mills. But then their ordinary earnings on this kind of traffic is more than they receive——

Mr. Call: On the westbound business?

Commissioner Prouty: Yes, on the westbound business, and on their vegetable business, ordinarily.

Mr. Call: But you don't know whether it is more on lemons to our competing territory? They charge forty cents a hundred to carry a box of foreign lemons to Chicago.

Commissioner Prouty: Yes, they get forty cents on west-
1352 bound business and twenty-five cents a hundred pounds for the eastbound traffic.

Mr. Peabody: I don't know. If they do they get more than six mills per ton mile. That is eight dollars a ton. That would be a great deal more than six mills per ton mile.

Mr. Call: I notice in exhibit 5 that you have figured out here the percentage of freight rate to the value of the product, to Chicago, in which you give the orange rate as a dollar fifteen, and the value per ton as 4.33, and lemons at the rate of $1, and value 3.27. Where did you get your figures on the value of the product?

Mr. Peabody: I stated while ago that our general agent at Chicago investigated the matter and reported the price to me. Since that time I have seen figures which we have paid in our claims, as the basis upon which the claims were made, paid to the citrus growers here, for Chicago market averages and it only varies one cent from that, $3.12 per box; I think it is $3.13 on the basis of the claims paid to the grower.

Commissioner Prouty: That figure is not very material in this connection.

Mr. Call: No, but as a matter of fact——

1353 Mr. Norton: He stated the table was merely an illustration.

Mr. Call: —that is about fifty per cent larger than the actual price we got.

Mr. Peabody: On oranges or lemons?

Mr. Call: Both.

Commissioner Prouty: Those are the prices at Chicago?

Mr. Call: Yes. Our average price at Chicago for the whole year for oranges was $2.56, and he has given us here as $3.12. Our average on lemons for the whole year is $2.86, and he has given it here as—well, his lemon price is $2.75 and our price is $2.86.

Mr. Peabody: Mine is less.

Mr. Call: The lemon price is about right. It is the orange price that struck my eye as being wrong.

Mr. Call: You move a bunch of those cars and—it almost always happens that the best pig is killed by the train, too?

Mr. Peabody: Yes, we find that out. It is always blooded stock that is killed.

Mr. Call: Table No. 6 shows the average haul as 1985 miles in 1909. How do you get that?

Mr. Peabody: Divide the ton miles by the number of tons.

Mr. Call: Do you get your ton miles from all of your—

1354 from every car that you deliver?

Mr. Peabody: Yes, sir.

Mr. Call: Take every car that you deliver?

Mr. Peabody: I have in my office an abstract of every waybill made on the Santa Fe System. It is made from that, each item separate.

Mr. Call: That is the average number of miles that you hauled it?

Mr. Peabody: Yes, sir.

Mr. Call: Do you take on the other hand the actual amount that you receive?

Mr. Peabody: Yes, sir.

Mr. Call: The actual amount of money that you receive?

Mr. Peabody: The actual money we get. You will find those figures in my statement all balance with the annual report to a cent.

Mr. Call: Have you got the actual percentage that you get out of all this freight? That is, taking the actual amount of freight that the shipper pays on this citrus fruit, what percentage do you get out of it?

Mr. Peabody: I don't know. I can tell very easily by applying the dollar fifteen rate to the number of tons and ascertain it,

1355 that is not a difficult computation at all. Multiply the number of tons by the rate, a dollar fifteen, and apply our earnings against it, would show what proportion we got of the total.

Mr. Call: But it would seem that your per cent of the earnings was less than your per cent of the distance hauled, for instance you haul about four fifths of the way. 2500 miles being the average haul on the fruit, you haul practically——

Mr. Peabody: Where is the per cent? I don't see that.

Commissioner Prouty: When he hauls the traffic to Kansas City he gets it entirely.

Mr. Call: Yes.

Mr. Call: I notice exhibit 9, that you have given the present weight of your cars. That is of recent date, is it?

Mr. Peabody: Yes, sir, on that series.

Mr. Call: How does the weight of your cars compare now with the weight say for instance six years ago?

Mr. Peabody: Considerably heavier.

Mr. Call: How much heavier?

Mr. Peabody: I don't know. Considerably heavier. They are materially heavier, stronger cars.

Mr. Call: On all cars?

Mr. Peabody: Yes.

1356 Mr. Call: There has been a gradual increase in your tonnage capacity of each car, average tonnage capacity?

Mr. Peabody: Yes, and also a small increase in the average load, but the average tonnage capacity has increased very much faster than the average load.

Mr. Call: That is, you think that your actual loading has not kept pace with the capacity that you furnish?

Mr. Peabody: I don't think anything about it. I know it.

Mr. Call: Wouldn't that reduce you almost to a train earnings basis for computing the profits?

Mr. Peabody: No.

Mr. Call: That equipment is furnished, isn't it, on the train basis?

Mr. Peabody: No. The only basis that we use is the gross ton mile as a unit, as being the only unit which includes all the elements entering into transportation. It don't make any difference——

Mr. Call: I asked you when you get up a statement for your officials as to what basis you use.

Mr. Peabody: These are made on the gross ton mile. Every statement for every division on the road is based on the gross ton

1357 mile as being the only method of taking all the factors into consideration.

Mr. Call: Well now, maybe I can get at it in a different way that will make me more clear. What is your idea in furnishing this increased capacity in the cars?

Mr. Peabody: The idea is to have a car of larger capacity. We have been striving to reduce our expenses, the expense was so perilously near the revenue basis, in some cases above it, and we have been constantly engaged in an effort to reduce our expense by means of better power and heavier equipment, and all that sort of thing.

Mr. Call: It is the purpose in providing larger cars to reduce the expense of carrying freight, isn't it?

Mr. Peabody: Yes, sir.

Mr. Call: And that is the same object in getting larger locomotives?

Mr. Peabody: Yes, sir.

Mr. Call: So your train will pay you more money, isn't it, for the same labor?

Mr. Peabody: So that the business will pay us more money.

Mr. Call: So the train will pay you more money with the same labor. You can have an engineer and fireman and conductor and

1358 a couple of breakmen, and they can just as well handle a train with fifty cars, each one of the capacity of 40,000 as they could the old-fashioned train of twenty cars and a very much less tonnage?

Mr. Peabody: Oh, yes, the cost is a great deal more.

Mr. Call: But that is the idea you have in mind in increasing your cars, the size of the cars and locomotives, is to decrease the train expense?

Mr. Peabody: Decrease the ratio of expense.

Mr. Call: To decrease the cost of moving the train, isn't it?

Mr. Peabody: Decrease the cost of moving the property, whatever it was.

Mr. Call: In train lots?

Mr. Peabody: No.

Mr. Call: When you really get down to it, the real cost of transporting your stuff depends upon the number of trains, and the size of the trains, and the cost for which you move each train?

Mr. Peabody: We have lots of trains of only one or two cars, a great many of them. We have lots of trains with 60 cars, I guess. I think we sometimes get up as high as that. And they run all the way down. There isn't any such thing as a train unit, can't be, that is of any value whatever because of the variation in the
1359 size of a train. In fact, an engine and caboose is figured as a train.

Mr. Call: Have you compiled here the average number of cars in your trains?

Mr. Peabody: No, sir.

Mr. Call: Do you know, for instance, what number of cars there is in this citrus fruit business?

Mr. Peabody: No, sir.

Mr. Call: You don't know how many cars on an average one locotive will carry across the continent?

Mr. Peabody: No.

Commissioner Prouty: You never move this citrus fruit unless you move it in a full train, do you, Mr. Peabody?

Mr. Peabody: It is a full train on some divisions, and it would lack a full train on other divisions.

Commissioner Prouty: Yes, but it is a full train, it is all the engine can handle?

Mr. Peabody: We aim to load as heavily as we can, but whether or not we sometimes send out fruit in a small train I don't know. I should imagine sometimes we would not have exactly enough fruit to make a full train. Our object is to use the effective maximum power as far as we can, but we don't get up to that by a con-
1360 siderable degree in actual operation.

Mr. Call: Do you know anything about the service, class of service that is accorded this citrus fruit?

Mr. Peabody: I know it is called expedited service.

Mr. Call: What do you call it?

Mr. Peabody: What service do we call it? Just call it expedited service.

Mr. Call: That is the name it goes by?

Mr. Peabody: I don't know what they call it.

Mr. Call: What other commodities move under the same service?

Mr. Peabody: I believe they call it a redball train. But that applies to anything besides citrus fruit that is moved in this par-

ticular train. California trains are all called redballs. We have a redball, which is a through fast train, called the redball.

Mr. Call: In that you move California commodities?

Mr. Peabody: Move all sorts of things. I have seen a car of rails in a redball train.

Mr. Call: So have I. You have all cars that are manifested in those redball trains?

Mr. Peabody: Every car that is manifested. No car moves without a waybill, if that is what you mean by manifested.

1361 Mr. Call: Do you know anything about the transporting service, actual transporting service?

Mr. Peabody: I don't know just what you mean by that.

Mr. Call: Actual operation. Do you know anything about the operation of these trains?

Mr. Peabody: No, sir, only by observation of the daily reports that I get.

Mr. Call: Do you get reports, for instance, as to grades?

Mr. Peabody: I have all records of grades.

Mr. Call: You have records, then, perhaps of the grades upon which you double locomotives?

Mr. Peabody: I have a record of every train that is doubled.

Mr. Call: You have a record of all the trains that they double over a hill? That is, leave half of it and go back and get it the next day?

Mr. Peabody: Not the next day.

Mr. Call: Well, some day?

Mr. Peabody: They go back right away as soon as they get to the top of the hill. I have the entire train movement. I have all the train sheets, or the tally-sheets, train sheets, all the wheel reports, and abstracts of all the waybills.

Mr. Call: The usual way of moving this citrus fruit over the hills is either to put on two locomotives and haul a very large
1362 train or double up, leave half of the train and go back and get it later and then go on.

Mr. Peabody: That depends on how many we have. We supply for those mountain districts heavier locomotives. We try to distribute the power so that the power will fit the grades. We can't always do it.

Mr. Call: For instance, your grades are between here and Albuquerque

Mr. Peabody: Some of them.

Mr. Call: Have you any grades beyond that?

Mr. Peabody: A few. The highest point would be over the Raton Mountain. We now run by the Belden cut-off. We have a pusher grade there of about twenty-five miles.

Mr. Call: Commencing at this end of the line, I suppose your first grade is the San Bernardino hill?

Mr. Peabody: I don't know. I don't carry that in my mind. You will find grades all the way from here to Chicago.

Mr. Call: The result of your economies in providing larger and

heavier equipment has been to decrease your transportation expense, hasn't it, in the last five or six years?

Mr. Peabody: No, sir, the transportation expense has increased. We have tried to keep pace with the extra expense, but couldn't do it.

Mr. Call: Is that the way President Ripley puts it in his reports?

Mr. Peabody: I don't know anything about that.

Mr. Call: Do you make those up for him, or does he get those up himself?

Mr. Peabody: He writes some of it himself. The information he obtains from his subordinates.

Mr. Call: I see in this report some of these items that kind of look to me as if it was decreasing.

Mr. Peabody: Items of expense?

Mr. Call: Yes, items of expense. I notice on page 32 that the transportation expense for 1908 is given as $28,395,589.60 and in 1909, $26,674,863.83, making the decrease in transportation expense during that year something like two million dollars.

Mr. Peabody: Don't say anything about the quantity.

Mr. Call: No, we will get the quantity over on the other side. Is that a correct statement?

Mr. Peabody: It is a correct statement, yes, sir.

Mr. Call: Then I notice on page 36 that he says that the freight revenue was in 1909 $64,212,638.10, and for 1908 $61,818,638.51.

Mr. Peabody: Yes.

Mr. Call: Or a gain there of about two and a half million dollars in freight revenue?

Mr. Peabody: Yes.

Mr. Call: A saving of transportation expense, and a gain in revenue. I notice he said that the number of tons of revenue freight carried was in 1909, 17,220,597, and in 1908, 16,610,912?

Mr. Peabody: Yes.

Mr. Call: That is correct, too, is it?

Mr. Peabody: Yes, and the next item, read that, please, in the same connection. Tons carried don't mean anything. It might be five miles or five hundred miles. Tons carried one mile is the basis.

Mr. Call: I would judge that didn't amount to so very much because the expense would be largely increased per mile if it was carried one mile as against two thousand miles.

Mr. Peabody: No, the measure of service is tons carried one mile, not the number of tons carried.

Mr. Call: You can carry a car two thousand miles per mile cheaper than you can carry it one mile, can't you? I notice that your percentage of transportation expense to revenue, as you have it in these reports, earnings from 1901 down to 1909, is as follows: 1901, 31.8; 1909, 28.3 per cent, which would indicate a gradual reduction in transportation expense, that is percentage of transportation expense to revenue.

Mr. Peabody: I should want to analyze that before I answer that question. You can state it in that way if you want to.

Mr. Call: Is that a fact, that there has been a gradual reduction in the percentage of transportation to revenue?

Mr. Peabody: I don't know whether there has or not. I couldn't tell without analyzing those figures. I can tell by working it out. We know that our costs are more.

Mr. Call: There has been a gradual reduction, hasn't there, in your total operating expense as well, that is, in the percentage that it bears to the tonnage revenue?

Mr. Peabody: We are making it so.

Mr. Call: You are getting there, aren't you?

Mr. Peabody: I don't know yet. It is a little uncertain.

Mr. Call: It has been reduced about six per cent in the last four years?

Mr. Peabody: I don't know.

Mr. Call: My recollection is that it was about 66 in 1906, and it is down to 60 now.

Mr. Peabody: The ratio of expense—the ratio of operating expense to revenue is a very misleading factor. You can have a very high ratio and make a great amount of money, or you can
1366 have a low ratio and make very little money.

Mr. Call: I suppose it depends upon how many big depots you build and charge up to operation.

Mr. Peabody: I see you are not familiar with the Commission's rulings.

Mr. Call: I know you did change your method since that decision, but you have been running a whole lot of permanent improvements to expense that the Commission required you to change, four or five million dollars a year?

Mr. Peabody: No. Wherever we did that it was stated. You will find in one of these statements the assignment of $900,000 into operating expense.

Mr. Norton: The reduction in operating expense to which he refers was during the panic of 1907, when they were greatly reduced and cut down at that time.

Mr. Peabody: The ratio of operating expense to revenue does not amount to anything at all. As I say, you can have a high ratio and make money or a low ratio and lose money.

Mr. Call: The ratio of transportation expense does mean something, doesn't it?

Mr. Peabody: No, not necessarily.

Mr. Call: If the books are correctly kept?

1367 Mr. Peabody: The books are correctly kept. There is no such "if" attached to a corporation.

Mr. Call: I mean if you just simply charge to conducting transportation what it actually costs to transport it.

Mr. Peabody: There is no manipulation, Mr. Call.

Mr. Call: I didn't mean to insinuate that there was, but I mean in your way of computing, if you only consider the items that really go into the transportation.

Mr. Peabody: We follow the exact plan of the Interstate Commerce Commission which tells what items to charge and how each

item should be charged, and if there is any wrong doing it is chargeable to the Commission in that regard.

Mr. Call: There will not be anybody complain about that.

Mr. Peabody: No, the method of accounting prescribed by the Commission is very much better than they used to do.

Mr. Call: I know we are glad to see the items divided.

Mr. Peabody: So are we.

Mr. Call: Now, we would like to know what your average train is. Put it this way. I have it right here: Please furnish extracts from the despatcher's train sheets of train movement on the Santa Fe showing number of cars in each freight train.

Mr. Peabody: You want the number of cars of citrus fruit
1368 in a train running from here to Missouri River?

Mr. Call: Showing the number of cars in each freight train, containing cars loaded with citrus fruit——

Mr. Norton: That would show in a mixed train the number of cars of citrus fruit, and the number of cars of other commodities.

Mr. Mathews: We want a synopsis of the train sheets for a period of time.

Mr. Norton: Are you asking this upon the idea that we are hauling solid trains of oranges from here to Chicago?

Mr. Matthews: We want to know what the other commodities consist of.

Mr. Peabody: How long a period?

Mr. Call: We want to know how you move this citrus fruit, the size of the average train; the average locomotive, how much it will handle.

Mr. Peabody: If the Commission will indicate the statement it wants I will do my very best to furnish it.

Commissioner Prouty: I assume that these oranges go in trains which are substantially loaded to their capacity. Is that true or not?

Mr. Peabody: They vary a little in the weight of the train, the number of cars, the respective number of cars of oranges and
1369 other freight per train.

Commissioner Prouty: It doesn't make any difference whether there is other freight on that train or not. Your time on these oranges isn't anything very fast between here and Chicago. Assuming that you handle this stuff through in eight days how many miles an hour would that be?

Mr. Peabody: That is a hundred and ninety-two hours.

Commissioner Prouty: From San Bernardino how many miles?

Mr. Peabody: 2260 miles, I think.

Commissioner Prouty: About twelve miles an hour. That is no more than a fair merchandise schedule.

Mr. Peabody: Oh yes, thirteen miles an hour with stops included would mean that a great deal of the way we are running forty miles an hour, because we can't pull at that rate over the steep grades and we lose a great deal of time at terminals, so it would mean, going on the side track for passenger trains, and so forth, at least thirty or forty miles an hour.

Commissioner Prouty: So it would seem to me you handle these

oranges between here and Chicago under favorable conditions. You don't handle them at a high rate of speed, and you handle them under such conditions that you can put a full load into each train.

Mr. Peabody: No, sir, I think not. I don't think that any
1370 of our engines haul any considerable number of oranges; I don't think they are given their full rating. In fact I know they are not.

Commissioner Prouty: How much would it be short of the full rating? *I* full rating may mean one thing, or it may mean another.

Mr. Peabody: That means what they are able to haul over the division.

Commissioner Prouty: Mr. — testified that a fair time on merchandise en route from the Missouri River to Ogden would be eleven miles an hour. He said he used to make it in a great deal less time than that, but he said they lengthened out the schedule, put it on a basis where the freight could be handled more economically, and they were now handling the freight in very long trains, very economically.

Mr. Norton: That is a level road, isn't it?

Commissioner Prouty: That depends upon who tells it. Is it any more level than your road by the Belen cut-off from here to Kansas City?

Mr. Peabody: Yes, I should say very much more so. Their profile is not near so irregular as ours.

Mr. Norton: I have been over that road, and the only mountains that I know of are in Colorado.

1371 Commissioner Prouty: The only grades between Omaha and Ogden are in Colorado?

Mr. Norton: Yes, in Colorado and Wyoming.

Commissioner Prouty: The profile doesn't make so much difference. I don't know what your profile is between here and Albuquerque, but I very much doubt if you have as heavy grades between here and Kansas City as the Union Pacific has between Omaha and Ogden. What is your heaviest grade?

Mr. Norton: We go above four or five thousand feet right here; and we go over 7000 at Flagstaff, and we go above 7000 in the Gloriettas.

Commissioner Prouty: You don't go through the Gloriettas?

Mr. Norton: Well, we have been heretofore.

Commissioner Prouty: Those are cut out by the Belen cut-off. They go as high as that, I think, as high as Flagstaff.

Mr. Norton: They don't go down again. We go down to the Colorado river, 3000 feet, at Needles, then we go right up to over 4000, and then down into Ash Fork and then up again, up and down.

A By-stander: Your Honor, the ruling grade on the Union Pacific west, except between Granite Canyon and Sherman Hill, is 43
feet. Eastbound it is the same, except from Wasatch to the
1372 station below, where it is ninety feet.

Commissioner Prouty: We had the profile, I know, in the Salt Lake case, claiming they had severe grades there which they

were obliged to overcome—I think you can show by divisions what the standard engine handles. If you haul these oranges trains through as a solid train you can show how many cars there are in the orange train.

Mr. Peabody: In order to avoid the criticism of selection I would like to have the time selected, because I don't want to meet the suggestion when I come in——

Mr. Call: Can you give us the train-sheets for a week?

Mr. Peabody: Do you want the train-sheets themselves?

Mr. Call: No, the information from them.

Mr. Peabody: All the train-sheets for a week, and follow it through to Chicago?

Mr. Call: Yes.

Mr. Peabody: I think it would answer the purpose a good deal better to take a certain number of trains and follow those trains through.

Commissioner Prouty: Couldn't you take the first week in March, or the last week, and give us the number of cars in each train containing oranges which moved out of a divisional point
1373 for that week?

Mr. Peabody: And follow them clear through?

Commissioner Prouty: No. Give us the number of cars in each train which contains oranges moving out of a divisional point for the entire week. You need not try to follow the trains through.

Mr. Peabody: That will be a good deal of a job, but I will do it.

Commissioner Prouty: No, I don't think so.

Mr. Peabody: Oh yes, it will, because the only way to get it is to go to the wheel report. That will require the examination of all the wheel reports about that time. But I can do it.

Mr. Norton: And we want the tonnage shown on that also.

Mr. Peabody: And you want it for some week, the last week in March?

Mr. Call: Take it for one light week and one heavy week, and make an average. Suppose you take the first week in March. That seems to have been a fairly heavy week.

Mr. Peabody: I haven't got those reports in shape to handle——

Mr. Call: Take it last year, then, the week commencing the 6th of April.

Mr. Peabody: You are showing the biggest week?

1374 Mr. Call: That is 1908, that is the largest week.

Mr. Peabody: My wheel reports for 1908 are stored away.

Commissioner Prouty: Well, take the first week in April, 1909.

Mr. Peabody: All right, sir. An abstract of the trains out of each divisional point, showing the consist of every train which contains oranges, showing the number of cars in the trains, number of cars of oranges, and number of empty cars.

Mr. Call: Mr. Peabody, can you tell me the average per diem of a box car as compared with a refrigerator car?

Mr. Peabody: The average per diem?

Mr. Call: The average miles it makes in a day. You have given us the average miles a refrigerator car makes as 60.

Mr. Peabody: Yes, I can get it.

Mr. Call: It is stated as 30 in Mr. Kendrick's letter.

Mr. Peabody: Well, that is correct, then, if it is stated there. There is no use getting it anywhere else.

Mr. Call: Can you give us a figure as to the amount of westbound tonnage to California as compared with the eastbound tonnage?

Mr. Peabody: California business?

Mr. Call: Yes.

Mr. Peabody: Oh, yes.

1375 Mr. Call: What is it?

Mr. Peabody: I can't give it to you right now. I can make that statement.

Mr. Joseph H. Call: What we want is a statement of the gross tonnage of California products eastbound and a statement of the gross tonnage westbound to California.

Mr. Peabody: You mean everything we handle, you call that California products, it don't make any difference where it comes from?

Mr. Call: Yes, originating in California or coming to California. We want to make our own percentage on that. Let it cover a year. Anything that goes out of California and comes into California. The tonnage in and out of California eastbound and westbound, for a year. And we would also like the per-cent. of empties and box cars.

Mr. Peabody: I can't give you that.

Mr. Norton: Why wasn't this requested before the trial? You made some very extensive demands upon us for information.

Mr. Call: We come to these things as the other side develops the case. I didn't suppose you were going to make any point on that proposition.

Mr. Norton: All I put on Mr. Peabody for was to put in

1376 some general information on the question of rates, because we felt there was no evidence at all that the rate of a dollar fifteen on oranges is unreasonable. There is no evidence that the rate on lemons ought to be different from that on oranges. And in a court of law on the case made by the complainant we would be entitled to a non-suit. There has been an absolute failure of proof on the two rate propositions. But I put on Mr. Peabody for the Commission's benefit.

Mr. J. H. Call: Mr. Peabody, your calculation in comparing the tariff rate between California and Florida is based wholly on the ton mile proposition?

Mr. Peabody: Well, I give the rate there per hundred pounds.

Mr. J. H. Call: Yes, but it is on the ton mile basis.

Mr. Peabody: It shows per ton mile, yes, and per hundred pounds, both.

Mr. J. H. Call: Are you familiar with the distance tariff of the Santa Fe Railroad?

Mr. Peabody: Not particularly familiar with them. I don't think I — seen one in fifteen years.

Mr. J. H. Call: You know they do file a distance tariff, do you not?

Mr. Peabody: We have the distance tariff. I don't know how much it is used.

1377 Mr. J. H. Call: We would like to refer upon the argument to the distance tariffs that are on file with the Commission, filed by the Santa Fe Railroad, showing the decrease in ton mile with the distance.

Mr. A. F. Call: As I understand it, the Santa Fe pay the Refrigerator Dispatch Company mileage, do they?

Mr. Peabody: So Mr. Leeds testified, and I know that to be the fact.

Mr. Call: What is that, six-tenths of a cent?

Mr. Peabody: You have all that stuff in the evidence.

Mr. Call: What items does that cover, that mileage?

Mr. Peabody: The mileage of the car, on the rails of the Santa Fe.

Commissioner Prouty: Oh well, the contract shows all that.

Mr. Norton: I would like leave to file a profile of our road as long as the question has come up.

Commissioner Prouty: Very well.

Mr. Halsted: I would like to ask to introduce a statement for the Salt Lake road showing the products hauled for four years.

(The statement referred to was received in evidence and marked Defendant's Exhibit No. 51, and same is attached hereto.)

(Witness excused.)

1378 EDWARD CHAMBERS, previously sworn, was recalled for further examination, and testified as follows:

Direct examination:

Mr. Norton: Mr. Chambers, there has been some statement in the evidence, in fact the Commissioner referred to the fact once or twice, that in the matter of refrigerating in the houses of the shippers it is more desirable to do it there than to refrigerate in cars, that is, precooling, because they would thus have the advantage of storage in time of car shortage. From the capacity of the houses which they now have, and from the capacity of any houses which they may build, from the experience in past car shortage time, what would you say about those houses being of any great practical service in such circumstances?

Mr. Chambers: I don't think they would be of much service in case of car shortage, because when we have a shortage of cars we use a great many cars, and it runs up into the hundreds; it probably would be an advantage in case of storing some particular varieties that they wanted to send out to later markets. That is the merit I see in the storage proposition.

Mr. Norton: Reference was made to your allowing packing-house products to be put into your cars and pre-iced by the shipper.

1379 I will ask you to state whether those are carried in bulk, in our cars, whether packing house products are in fact carried in our cars.

Mr. Chambers: Not in our fruit cars. We move some packing house products in some of our cars that are not in use in the fruit service, but packing house products are usually piled right up in the car without any packages, and some salt thrown over them, that is, pork shipments. There is very little fresh beef sent to California.

Mr. Norton: The question of the distribution of the orange product came up Saturday. I will ask you to state whether it is about the same as it was on the former hearing of the case.

Mr. Chambers: Yes, sir. The empty refrigerator cars are sent to the loading point in the morning from San Bernardino and Los Angeles——

Mr. Norton: I mean as to the eastern territory.

Mr. Chambers: I was going to say in the local train. They are gathered up as early in the evening as possible by the local trains and concentrated in San Bernardino, and at that point they are made up as a train and sent over the hill; just as fast as the cars arrive in San Bernardino to make up a train the train is started out.

Mr. Norton: Shortly after midnight?

1380 Mr. Chambers: That depends when the fruit comes in. It is started just as early after it comes in to San Bernardino as possible. When there is sufficient for a train.

Mr. Norton: Then they go out section after section?

Mr. Chambers: Yes.

Commissioner Prouty: Are those trains usually solid orange trains at the start?

Mr. Chambers: If there is sufficient fruit to make up a train, and then as it comes in on the local trains it is concentrated and sent up the hill altogether. The oranges and the other fruit is moved in the same trains out of San Bernardino. Of course, there are a great many solid trains of oranges go out.

Mr. Norton: How long a time is consumed in collecting and getting the train loads into San Bernardino and starting them out, about?

Mr. Chambers: We begin to collect at some points about four o'clock.

Mr. Norton: You send out switch-engines to distribute the cars in the morning?

Mr. Chambers: Well, the local trains distribute the empty cars.

Mr. Norton: The local trains also gather them up and

1381 bring them into San Bernardino?

Mr. Chambers: Yes, sir.

Mr. Norton: I had in mind when I put this question which you have answered about the cars; I understood you to say that the distribution of the cars in the eastern territory is about what it was when the former orange case was tried.

Mr. Chambers: I would say the proportion going east to Chicago is just about the same now as in 1904, on oranges.

Mr. Norton: That is what I meant by my first question, and you answered as to another matter.

Mr. Chambers: And the proportion of lemons is about the same.

Mr. Norton: In speaking of the service they usually get, Mr. Call has suggested that the oranges move in redball service, or pos-

sibly trans-continental service. Do they get a better service than the redball service?

Mr. Chambers: Yes, sir, we aim to give the fruit shipment as near uniform service as we can get it. That is, get as close to the schedule as possible, even if the trains have to be lightened some.

Mr. Norton: So that the locomotives don't have their full tonnage rating?

Mr. Chambers: No sir, not on oranges.

1382 Mr. Norton: Mention has made also by one witness the other day of small Santa Fe cars. Have you any small cars now in the service?

Mr. Chambers: No, all of these cars are forty-foot cars now.

Mr. Norton: From your general knowledge of this citrus business, and you have been in it from the beginning, I would like to ask you what the standing of this industry is as compared with what it was ten years ago or five years ago.

Mr. Chambers: Its standing is very much higher today than it ever has been in its history. Its standing all around. I mean by that its quality, grade, and the handling of it.

Mr. Norton: It ranks with the banking business or the mercantile business or any other business, does it not?

Mr. Chambers: It has kept right up with the pace.

Mr. Norton: It is a safer business than it used to be, isn't it?

Mr. Chambers: Yes.

Mr. Norton: These men have discovered their dangers and have prepared to meet them?

Mr. Chambers: Yes, sir.

Mr. Norton: This has been done by the organization?

Mr. Chambers: Yes.

Mr. Norton: By the California Fruit Growers Exchange?

1383 Mr. Chambers: Yes. Their marketing is very much better than it ever has been.

Mr. Norton: It is in the hands of more capable, or at least capable business men?

Mr. Chambers: I would say that it is in the hands of more capable business men today than ever before in the history of the business.

Mr. Norton: And it takes rank with any business in southern California?

Mr. Chambers: Yes.

Mr. Norton: More than it ever did before?

Mr. Chambers: Yes, sir.

Mr. Norton: As an illustration, in San Bernardino both the lemon growers and orange growers practically went out of business one time. Are they coming back? Is the industry being revived there?

Mr. Chambers: The lemon industry in San Diego county is in a very good condition today, better, really, than it ever has been. In fact, it is understood to be on a profitable basis.

Mr. Norton: In your experience has it appeared that the nearer the grower gets to doing the whole thing the better he is rewarded for his endeavor?

Mr. Chambers: That has been my experience from the be-
1384 ginning.

Mr. Norton: Has that been shown by our claim department in claims filed against the railway company?

Mr. Chambers: I think that has been shown by the result.

Mr. Norton: And your experience is in keeping with the testimony of Mr. Chase, who was on the stand the other day?

Mr. Chambers: Yes, sir.

Mr. Norton: One further question, that I wanted to show by Mr. Wells. Did you ever hear a conversation between Mr. Ripley and Mr. Wells, as to the handling of this business, and the attention that Mr. Ripley desired given to it? Do you know what Mr. Wells' orders are in this regard?

Mr. Chambers: Mr. Ripley stated, in my hearing, to Mr. Wells, that he would hold him personally responsible for the car supply.

Commissioner Prouty: I think it sufficiently appears that both your line and the Southern Pacific gives this business great attention, and is giving it competent attention.

Whereupon, a recess was taken until Two o'clock P. M.

1385 After Recess.

MARCH 21, 1910—2 O'clock p. m.

Commissioner Prouty: Proceed, gentlemen.

Mr. Norton: To have our position clear on the refrigeration question, I would like to have Mr. Chambers tell the Commission what our——

Commissioner Prouty: Mr. Chambers may take the stand.

Examination of witness EDWARD CHAMBERS resumed.

Commissioner Prouty: Do you desire to ask Mr. Chambers some further question?

Mr. Norton: Well, Mr. Chambers, in stating the Santa Fe's position to the Commission, made clear our position with reference to refrigeration, and if you wish to add anything to it, Mr. Chambers, I wish you would do so,—pre-cooling and refrigerating.

Mr. Chambers: Our position is that pre-cooling is part of refrigeration, and we propose to pre-cool shipments that move under refrigeration without any request from the shipper to do so, and whether he requests it or not.

Mr. Norton: We are prepared to do that.

Mr. Chambers: Now, in doing that if it develops that we can perform the service at any less cost than our present charge we propose to give the shipper the benefit of it.

1386 Commissioner Prouty: Well, suppose it develops that it costs more money?

Mr. Chambers: Well, I couldn't say as to that. We thought it would cost more when we first started in, but we found out that we could give the pre-cooling service for about what we saved in the re-icing in transit. That is as far as we have gone.

Mr. Norton: The cost of ice to your company at Los Angeles, Santa Barbara and some other points nearby has in the past been $4 per ton?

Mr. Chambers: Yes, sir.

Mr. Norton: The cost to your company with its present outfit at San Bernardino will not be $4 per ton?

Mr. Chambers: No, sir.

Mr. Norton: It will be considerable less. In your opinion, did the shipper have the benefit of that saving or did the refrigeration charge, assuming it to have been a fair one in the past, be continued in the future?

Mr. Chambers: Well, probably there are other costs that today are somewhat greater than when we made the $62.50 rate to Chicago, and it is our intention to take the same basis on which we figured the $62.50 rate, and if, on that basis, any less charge can be figured out, or any less cost than what the present rate is, we propose to give the shipper the benefit.

1387 Mr. Norton: What were those elements in the cost of the refrigeration charge which have increased?

Mr. Chambers: Well, ice, probably the supervision has increased some, our organization has been extended more, and we feel that the service is very much better today generally than it was at that time, and I suppose the cost of maintaining the cars may be a little more.

Mr. Norton: What supervision do you give to a refrigerated shipment that you do not give to a ventilated shipment?

Mr. Chambers: We have special men for the refrigerator service which are in addition to our regular station employés, where they inspect them, and then we have traveling agents on the lines of other roads looking after these refrigerator cars and after the service on the lines of our connections.

Mr. Norton: Is that limited to the refrigeration or does it extend to the ventilating also?

Mr. Chambers: It is more necessary with the refrigeration, because we have got to arrange for the ice supply with our connection, and also see that the cars are properly iced or have some one look after them at the different icing stations and check them over, and see that they are properly iced.

Mr. Norton: Now, suppose it turns out that the expense of refrigerating a car under your pre-cooling system is substantially

1388 the same as it has been in the past—that the pre-cooling and refrigerating cost is the same as straight refrigeration has cost in the past, under those circumstances would you not feel that you ought to reduce your refrigeration charge?

Mr. Chambers: No, sir.

Mr. Norton: Now, let us assume that the shipper can pre-cool and pre-ice his shipment and is satisfied to allow it to go through to destination without any additional icing and without any additional supervision upon your part, ought he, in your judgment, to be charged for that?

Mr. Chambers: Well, I would say that he should be charged

just what it would cost for the supervision, or that he be charged with the items of cost other than the cost of the ice and the pre-cooling service, and I would state right there that it is our intention to pre-cool for the shipper, and if it is demonstrated that one icing will take the shipments through to destination without injury in any way, why, there is no reason why we should not do it.

Mr. Norton: Well, there may be some controversy about that. Your system of pre-cooling is——

Mr. Chambers: And we haven't any objection to giving the benefit to the shipper of whatever saving there is in the refrigerating, no matter how it is done. If one icing will do it, then
1389 of course we should not charge as much for initial icing and pre-cooling as we do for the pre-cooling and initial icing and the re-icing in transit.

Mr. Norton: Now, let us assume the packer is right, and that he can, by putting his fruit into a cold storage room immediately upon being packed, bring it down to this low temperature, loading it into a car and pre-icing that car, and then you send it through to destination without any additional icing and without any additional inspection, for what reason should you make a pre-cooling charge? What service do you render, in your opinion, which entitles you to make that charge?

Mr. Chambers: We would have to inspect that car,——

Mr. Norton: Well, why?

Mr. Chambers: I mean the refrigeration portion of it, that is, the ice tanks, the drain pipes, and we would also have to keep it in repair, and that are items that are considered in figuring the present refrigeration charge—the standard refrigeration charge. Then whatever supervision we had to give that car, which is a question yet, that also should be added, and that should be in addition to the freight rate, I would say.

Mr. Norton: You think, then, that you should be allowed to charge whatever additional it would cost to maintain the
1390 bunkers and the apparatus connected with the bunkers?

Mr. Chambers: Yes, sir.

Mr. Norton: I don't quite see how there is any additional supervision in a case of that kind over a ventilated car.

Mr. Chambers: No, there wouldn't be any if it was found it was not necessary to inspect it in transit, except the additional cost of maintaining that part of the car that was especially for refrigeration purposes.

Mr. Norton: I think you misunderstood Mr. Chambers' reference to additional supervision. You mean that supervision may cost a little more now than it did when you first estimated the refrigeration charge?

Mr. Chambers: Yes, sir.

Commissioner Prouty: But there is no refrigeration supervision if this car will go through without re-icing?

Mr. Norton: No.

Mr. Durbrow: All the pipes will have to be watched, so far as the drain pipes are concerned, and inspected at each icing station.

Commissioner Prouty: Yes, but in the case of a ventilated car you would change the ventilators, you would take out and put in the plugs, and all that, but in this case you do nothing of
1391 that kind, although you may need to look at the drain pipe to see whether that is in order or not. So that it would come to this finally, Mr. Chambers, that if that method of refrigeration is feasible—and I agree with you that it is not at all certain whether it is or not—but if that method of pre-cooling and refrigeration is feasible you ought to make some charge that would fairly compensate you for providing the bunkers and keeping that part of the car in repair?

Mr. Chambers: Yes, sir. My position has been when this question first came up to me that we would let the shipper pre-cool his fruit in any way he chose and then he would take that fruit into our car and any saving that was made to us over and above the old way of refrigerating we would give the benefit to the shipper, or in other words, make a lower charge on the shipments pre-cooled than on the shipments that were not pre-cooled. But, of course, there were some objections to that, on account of transporting the ice to the packing house, and also the question—one man would probably pre-cool properly while the other might just simply do it to the extent that would be called pre-cooling, and the saving to us would not be as great.

Commissioner Prouty: It seems to me—although this is
1392 only an individual, off-handed opinion—that you must take charge of the entire pre-cooling and refrigeration, or the shipper must take charge of the entire business. That is to say, the shipper must pre-cool his fruit and pre-ice the car and assume the responsibility. If you are to assume the responsibility you ought to have the right to render the service. So if you want to allow the shipper to pre-cool his car and then to ice it yourselves, there would be an everlasting dispute between you and the shipper as to whether it was properly pre-cooled or properly iced.

Mr. Chambers: That is one of the difficulties we ran up against.

Mr. Norton: It was precisely on that theory that he stated that we would pre-cool even where they pre-cooled, because we believe it to be a common carrier's duty to furnish this part of the refrigeration, and it is seriously a question whether they can assume responsibitlity as they have offered to do here, and if we are to be responsible as insurers, as common carriers, we ought not to be interfered with in the performance with our common carrier's duty, which includes this part of the refrigeration.

Mr. Halsted: And in that connection, it seems to me that if you are going to allow the shipper to pre-ice you are going to
1393 demoralize the whole refrigeration system, because, of course, if you say fifty or sixty per cent of the shippers are going to re-ice, and those shipments are not going to be refrigerated en route, then the cost of the refrigeration of the shipments that are going to be refrigerated will necessarily be deranged.

Commissioner Prouty: Well, that might and might not be so. But one thing more, Mr. Norton: I think some time you should

get him to state whether you claim the right to control this entire refrigeration service or whether you are willing, if it can be done—suppose it turns out that it can be done, are you willing in that event that the shipper should pre-cool and pre-ice his car and assume the responsibility of sending that car through without additional icing?

Mr. Norton: If it should turn out that it can be done better by him than by us?

Commissioner Prouty: If it can be done so that he is satisfied to do it.

Mr. Norton: Well, I think that would be a question for the traffic people and Mr. Ripley to answer. I am speaking merely as a lawyer, and I do not think he has the right to put ice in our car. That is a service we are required to perform, and we can not
1394 be required to divide it with him.

Commissioner Prouty: Well, my memory goes back only a few years to the time when the railroads were all insisting upon the fact that that was a service which the shipper ought to perform.

Mr. Norton: Well, it has grown up like many another service, by holding ourselves out for it. We have become, by the law of custom, responsible for doing it.

Commissioner Prouty: But it seems to me there ought not to be divided responsibility. If you are required to render a service you ought to have the entire charge of that service, but if the shipper is satisfied to pre-cool his fruit and put it into your car and to add ice to it I do not quite see any reason why he might not properly be permitted to do that if he will assume the responsibility.

Mr. Norton: Aside from our legal responsibility for doing it, it seems to me the exigencies of shipment which arise every day and which would in these cases probably require re-icing in transit, notwithstanding the orders of the consignors, it would be more feasible and practicable for the carrier to attend to this delivery from beginning to end. I apprehend that on account of washouts, wrecks and other delays there will be on these shipments many, many instances, even if it is practicable to handle them in this way as a gen-
1395 eral rule, in which we shall have to hustle around and take care of that shipment in transit or else be responsible for it.

Commissioner Prouty: That seems to be the objection, as I understand it.

Mr. Durbrow: If your Honor please, I think it might be well for us to define our position here, because it may be, as your Honor has suggested, some months before this question of refrigeration charge is determined. As Mr. Norton says, it seems to be largely a question for the traffic officials to determine, to see whether they shall permit the shippers to refrigerate their shipments either by pre-cooling or othrwise.

Now, as a strict legal proposition, I take the position here that, it being made our duty under the amended act to furnish this service to the shippers we can deny the shipper the right to pre-cool or pre-ice his shipment, because we consider the pre-cooling merely a

part of the refrigeration service, and where we undertake to perform this service for all shippers alike we claim it is our right to perform and discharge that service, if for no other reason than to prevent a third class of cars finding their way into our trains. We have now cars moving under refrigeration and ventilation. They are
1396 treated the same, whether they are pre-cooled or not. It appears here that a large number of cars are diverted en route, and that some cars are held for different periods of time, and it may become necessary for us to watch those cars. It may be that because of some disability we are unable to make the time we ordinarily make, and notwithstanding the fact that the shipper has assumed responsibility to a certain extent under the provision of the tariff as it reads today, we would be charged with neglect for not delivering the fruit within a prescribed time, and I question whether the shipper can waive the right to the insurer for a safe transit of their commodities. It has been held, as your Honor well knows, that we can not relieve ourselves from responsibility for our neglect. The farthest the courts have gone in that particular is in the Hart case where they held we might agree upon the valuation, and the decision is shown to be upon that question, and the question so far as this company is concerned is now pending in the Circuit Court of the United States for the Northern District of California. But I think we should advise these shippers and these complainants at this time that it is a question to be determined in the future as to whether we shall permit them to pre-cool and pre-ice their shipments, so that
1397 they will not go ahead in the meantime and establish any more of these pre-cooling plants.

Commissioner Prouty: Yes, that is right; any shipper would be foolish at this time and before this question is decided to establish any additional pre-cooling plant. I take it no shipper would be likely to do that pending the decision of this question.

Mr. Norton: Aside from the legal and other considerations I have mentioned, there is a very strong equitable one in the fact that on the request of these people at a popular meeting, at which Mr. Ripley attended, we have made that great investment which you saw the other day, and being prepared, as Mr. Chambers has testified, to handle all of this business through that plant, we would naturally be very much disinclined to divide the pre-cooling.

Commissioner Prouty: I have no doubt you could handle this business through that plant cheaper than the individual shipper could handle it, and one reason why the Commission ought to know the basis on which this traffic is to be handled and what can be done is with a view of enabling the Commission to establish a refrigeration charge. As I suggested to you the other day, if it turns out that the shipper can do this for $30 a car, then you ought
1398 to be required to do it for $30 a car or let the shippers do it. That seems to be the idea, and I do not think the roads would object to that.

Mr. Call: It seems to me that all that has been said by counsel with regard to the objections and difficulties in the way of permit-

ing the shippers to re-ice is applicable to ventilated shipments. Now, as to our joint right to waive the duty and responsibility imposed by the act or imposed by law, it is of course conceded that it is impossible for a carrier to by contract waive or obviate liability for his own neglect; but it is also true that there could be no neglect without a breach of duty, and no duty unless that duty is imposed by law or by contract. Now, in this case there is no more duty imposed upon them than in the case of a ventilated shipment. We simply do not ask them to do anything, therefore there is no duty imposed upon them by contract or by law. We just simply ask them to let it alone; therefore there is no reason under the law why we cannot totally and absolutely take the responsibility on ourselves and relieve them from it.

Mr. Norton: On the contrary, the law makes us an insurer of the property.

Commissioner Prouty: The difficulty is this; they are liable still for delay in transit.

1399 Mr. Call: They are liable, of course, ventilated or refrigerated.

Commissioner Prouty: Now, if they were icing that car they could escape the consequence of that delay by opening the bunker and filling up the bunker with ice. If they have no right to do that they cannot escape the consequence of neglect resulting in delay.

Mr. Call: But we would not prevent them from protecting themselves against liability if they saw fit to do it, even in a ventilated shipment. Now, we ship a car under ventilation and the same condition arises exactly. It is stopped by a washout or a strike or a flood, and in case of a ventilated shipment they do not have to suffer that loss. If they want to ice that shipment they have a right to do it, but not to charge us for an expense caused by their own misfortune or neglect. There is no reason in the world why they cannot ice or pre-ice a car or re-ice a refrigerated car or ice a ventilated car for their own protection.

Commissioner Prouty: Well, it might be possible to say if the shipment is destined to Chicago and doesn't reach there within ten days that then the carrier shall ice that shipment.

Mr. Call: Yes, we have no objection to their icing and preventing damage to themselves. We would be glad to have them

1400 do that. But we ought not to have a burden imposed upon us simply because they may be unfortunate in getting the car through in those isolated cases where they might meet with some misfortune or accident or be guilty of some neglect. Now, with regard to the main proposition, the equity of this matter, we only ask here the same privilege they grant to other shippers coming west. Now, they do not raise a claim over there when the Armour people want to pre-ice their cars or ice them in transit by saying "We have assumed this burden and it is on us." They allow them to do it. They allow them to pre-cool all those commodities, or re-ice them in transit, but when it comes to this end of the line

and it moves east, all these terrible responsibilities come upon these carriers. We only ask the same privilege they grant other people, and no more, and our thought about it is this, that we are scattered here, we have lots of communities and scattering packing houses; they have the capital, they have the concentrated places, and they erect great ice plants, and they ought to be able to do it as cheaply as we can do it, and if they are put on a competitive basis they will do it. If we grant this condition under fair and reasonable terms it eliminates all this talk before your Honor and gets it right down to a competitive basis, and with all that advantage they ought to be able to compete, and we want them
1401 to do the work, and we only want them to do it well and at a reasonable price. Now, we do not think their method is right but we are open to conviction. If they can convince us by the shipments this year that their method is right and the fruit will carry through and they can do it as cheaply as we can, we want them to do it. We do not want to build any more houses. On the other hand, if they do injure the fruit and persist in injuring it against our will we want to protect that fruit. The great question before all of us, before the railroads and the shippers and the growers, before the Commission, if you please, is simply the protection of that fruit, over and above everybody's theory or plan. The protection of that fruit is the great question, and we want to have it done in the right way if we can. We believe we have the way, but we are not set or stubborn in that; we are willing to submit to a long series of tests, and all we want to — is to make the test and absolutely demonstrate to the minds of the Commission which is right and what it can be done for.

Commissioner Prouty: Proceed, now, with our cross-examination.

Cross-examination:

Mr. Call: You think the industry looks prosperous from
1402 the outside, do you?

Mr. Chambers: I think it does, yes.

Mr. Call: But you would not have any doubt about the figures that Mr. Chase gives as to cost, would you?

Mr. Chambers: No, I don't think I would doubt anything Mr. Chase stated.

Mr. Call: And when he told you he had investigated this thing all over California and arrived at a figure you would think it was approximately correct, would you not?

Mr. Chambers: You mean a figure for producing?

Mr. Call: For cost.

Mr. Chambers: I should think so, yes.

Mr. Call: And you would feel the same in regard to Mr. Hampton's statement, would you not?

Mr. Chambers: I should think Mr. Hampton is a pretty fair man; I don't know him as well as I do Mr. Chase.

Mr. Call: You would have no reason to doubt Mr. Woodford's figures as to what he actually got for the fruit, would you?

Mr. Chambers: I would not.

Mr. Call: You believe he has given us the figures correctly, do you?

Mr. Chambers: Yes sir.

Mr. Call: And you believe that the average the exchange gets is a fair average of the state, don't you?

1403 Mr. Chambers: I should say the Exchange average is a fair average.

Mr. Call: A fair average of the state.

Mr. Chambers: Of the methods of handling the business.

Mr. Call: So that as to the costs of producing and the amount received, as the rate maker here you would have no reason to differ with these gentlemen that have been introduced on behalf of the shippers, would you?

Mr. Chambers: No, sir.

Mr. Call: If you were picking men here to show this before this Commission you would pick these men, would you not?

Mr. Chambers: I think I would, yes, sir.

Mr. Call: Well, in that situation, with the business done very close to cost, on an average, and an increasing in product, you realize that we have got to increase consumption, don't you?

Mr. Chambers: Yes, sir.

Mr. Call: You realize that the business is up to that point where we just simply have to increase consumption—provide for distribution and increase consumption in every possible way, don't you?

Mr. Chambers: Yes, sir. You are speaking now as to

1404 oranges?

Mr. Call: I am speaking now as to oranges, yes. And don't you think that the carriers ought to help us on that proposition to every reasonable extent that they can?

Mr. Chambers: I think they should, and I think they have always helped you.

Mr. Call: Now, ought they not carry this product down at a price that would just give them the cost of carriage and a reasonable return on their investment and not try to make any more out of this business than any other line of business they carry?

Mr. Chambers: I think the business really needs it, and I think the carriers' charges are down to that basis now.

Mr. Call: And on that point, then, you do not speak, as you said the other day, from knowledge, not being a transportation man?

Mr. Chambers: No. What I have in mind is this, that when the rate was $1.25 for oranges and lemons, that was complained of and the carriers defended that rate and at that time they considered that the rate was really as low as they could be asked to go, and did not then return as much profit as they got on other business that perhaps was not as——

Mr. Call: Well, now, then——

1405 Mr. Chambers: Since that time the rate has been coming down, both the refrigeration rate and the freight rate.

Mr. Call: Yes, I know they came down with it, from the ancient

times, but that is because of a greatly decreased cost of transportation, and the greatly increased tonnage, is it not?

Mr. Chambers: Well, the tonnage has increased.

Mr. Call: Yes, and the proportion of money that you are making—that you get out of the citrus industry is gradually crawling up?

Mr. Chambers: Yes, it is increasing.

Mr. Call: As compared with all your earnings it is crawling up?

Mr. Chambers: The per cent of the total is increasing.

Mr. Call: And you realize as well as we do, don't you, that in order to market this increasing crop we must get down to the table of the ordinary laboring man and poor man, what he can afford to pay.

Mr. Chambers: In marketing?

Mr. Call: In marketing, to what he can afford to pay.

Mr. Chambers: I should think you had to do everything possible.

Mr. Call: And the lower we market the lower the price has got to be, has it not?

1406 Mr. Chambers: You mean to the consumer?

Mr. Call: To the consumer. The lower the price has got to be to the consumer in some way.

Mr. Chambers: Yes, but the prices are low now to the consumer.

Mr. Call: Don't you know we had to reduce the price twenty cents to market last year's crop, over the year before?

Mr. Chambers: I don't think the price to the consumer has cut very much figure. It is getting the consumer in the habit of using the oranges. I don't think the price to the consumer has cut very much figure in the past; it is getting them to actually use the oranges, getting them into consumption.

Mr. Call: But we have to compete with all those products along that line on the table of the poor man?

Mr. Chambers: Yes, sir, I should think so.

Mr. Call: Apples and canned stuff, and all such things?

Mr. Chambers: Yes, sir.

Mr. Call: Cranberries and everything in that line; and we have to meet that competition; that is our competition in oranges, is it not?

Mr. Chambers: I should say so, yes.

Mr. Call: We have to get down to that price. Well, don't you feel that the growers have done their part in this thing, in

1407 trying to produce and gather the fruit properly and in trying to pack it right and in trying to market it at a low price?

Mr. Chambers: I certainly think they have, yes, sir.

Mr. Call: You know we are marketing down to within about five cents a box from cost, do you not?

Mr. Chambers: I think you have gotten down to all of the economies you can.

Mr. Call: We have gotten down to all of the economies we can, and are getting just as good fruit as we can with all the work we can do.

Mr. Chambers: Yes.

Mr. Call: Do you know how the growers could decrease their cost or improve the situation?

Mr. Chambers: I do not.

Mr. Call: But as a matter of fact the railroads can help us some now, can't they?

Mr. Chambers: I don't know; I think the railroads have done just about the same as you have done. They have been getting down on their cost.

Mr. Call: You are hauling apples for a dollar?

Mr. Chambers: Well, we are not hauling very many.

Mr. Call: You are hauling celery for a dollar?

Mr. Call: If we didn't haul it for that price it wouldn't go
1408 at all, even the apples. Those are things that we are up against.

Mr. Call: You are hauling beans for eighty-five cents, are you not?

Mr. Chambers: Well, I don't think the apple or celery grower would have the right to come in and demand that we haul his apples at one dollar.

Mr. Call: Well, you are hauling beans at eighty-five cents and glad to get it, are you not?

Mr. Chambers: Yes, sir.

Mr. Call: And you are hauling sugar over a thousand miles for sixty-five cents, are you not?

Mr. Chambers: We must do that to get the sugar traffic of California and the east.

Mr. Call: That is the proposition I am talking about, that when you have to get a rate down to get the stuff moving you can make it.

Mr. Chambers: On those commodities we can increase the minimum.

Mr. Call: I know, but what does this extra weight cost you? It don't cost you, really, anything, to move it, does it?

Mr. Chambers: I should think it costs something to move it, a difference of twenty thousand pounds in one car.

1409 Mr. Call: Well, it don't cost you, all told, over four cents a hundred, does it?

Mr. Chambers: You mean for the——

Mr. Call: For the extra tonnage and extra care?

Mr. Chambers: I don't know.

Mr. Call: You figure it out and see if you can figure over four cents a hundred out of it.

Mr. Chambers: Mr. Peabody can give you the figures.

Mr. Call: And all this talk about the extra price of a car and the extra expense of maintaining it and your diversion costs, and your telegraphing and all that talk all together is covered by your .6 per ton mileage to pay for the use of the car, is it not?

Mr. Chambers: It is not, no.

Mr. Call: Well, that is your contract.

Mr. Chambers: For the refrigerator cars.

Mr. Call: For the refrigerator cars, on your contracts?

Mr. Chambers: The cost of telegrams are not with the refrigerator line at all with us; we figure that against the railroad company.

Mr. Call: I notice he gives it as a part of his items.

Mr. Chambers: Well, we don't figure that in the cost of refrigeration.

1410 Mr. Call: But the use of those cars and all the expense incidental to their maintenance, construction, cleaning and all that, is covered by that .6 of a cent per mile, is it not?

Mr. Chambers: No, that is not .6 of a cent. Mr. Leeds stated what his mileage was.

Mr. Call: Well, .6 in some places and three-quarters of a cent in others.

Mr. Chambers: That is supposed to compensate for the car itself.

Mr. Call: And that is only $15 a car for a trip through, is it not?

Mr. Chambers: I don't know as to the figures. I think the figures are all shown in the statement.

Mr. Call: About three cents a box on the fruit, or four cents a hundred?

Mr. Chambers: The figures are all shown in the statement.

Mr. Call: Well, for that reason are you entitled for more, outside of these considerations, that is, the percentage you pay for the use of that car and the extra weight of the car, what other reason would entitle you to any more freight than you get on beans?

Mr. Chambers: Well, beans pay us a great deal more per

1411 car than oranges do or lemons.

Mr. Call: Well, because you have more in it?

Mr. Chambers: Yes. We have 40,000 pound minimum and 85 cents per hundred. Our average earnings per car on beans——

Mr. Call: Well, you are getting back on the train earning basis.

Mr. Chambers: No, I am getting at the total amount.

Mr. Norton: I think it is known to the Commission that the orange now has gotten to the poor man's table in the east and really running the apple out.

Commissioner Prouty: I know that oranges come to one poor man's table.

Mr. Halsted: We have a statement here now showing the daily shipment of citrus fruit for the years 1906 to 1910 over the Salt Lake route.

Commissioner Prouty: You may file that.

(The statement in question was received in evidence and thereupon marked Defendants' Exhibit No. 52, and same is attached hereto.)

Mr. Halsted: I would like to make an explanation, though, in connection with that statement, that the Salt Lake road was washed

out, the through business, for the following period: 1906.

1412 from March 24th to April 16th; 1907, from February 22nd to March 4th, and then from the 5th of March to the 12th of April; and in 1909 from December 31st to date. That will explain the divergence in the figures for the months during those years.

J. S. EDWARDS, recalled by complainants, in rebuttal, testified further as follows:

Direct examination:

Mr. Matthews: You have prepared a statement showing the number of cars pre-cooled and pre-iced at your plant, shipped during the season of 1907-1908 and 1908-1909, showing the number of the car, date of shipment, destination and amount paid thereon, have you not?

Mr. Edwards: This is not a complete statement; it is only those upon which we have paid. There are other shipments on which no charge was collected and which are not included in this list.

Mr. Matthews: We offer that in evidence.

(The statement in question was received in evidence, and thereupon marked Complainants' Exhibit No. —, and same is attached hereto.)

Mr. Matthews: You shipped a large number of cars pre-iced in July, 1908——

1413 Mr. Edwards: About 91.

Mr. Matthews: You have received from the agent of the California Fruit Growers' Exchange the icing reports on all those cars?

Mr. Edwards: We have.

Mr. Matthews: Do any of those reports show re-icing in transit?

Mr. Edwards: I testified the other day from memory that they did not, and since then have spent a good deal of time checking over and have not found a single record to the contrary.

Mr. Matthews: If they had not been iced the record would show it?

Mr. Edwards: The record shows none—no ice put in.

Mr. Matthews: You heard the testimony of Mr. Seligman as to the injury to fruit or oranges by bringing them down to a temperature of thirty three and then letting it go up again and not maintaining it at that. What do you say to that?

Mr. Edwards: I think there is nothing in it.

Mr. Matthews: Have you had any experience along that line?

Mr. Edwards: Well, we have orange orchards that are subject to temperatures that bring them very close to the freezing point in our section, though I am happy to say that they don't often get frosted, and the temperature of that orchard varies from

1414 90 degrees down to 26, and until an orange is frosen it is not injured. Besides that, in a record of about 130 cars which we have shipped and pre-cooled in this method we have never had a report of any sort of injury or evidence of injury from over-refrigeration.

Mr. Matthews: In the pre-cooling of this fruit that was shipped will you please tell us what your tests show, how long it ordinarily takes to reduce the temperature of a box of oranges say from 80 to about 45, what part of 48 hours does it take to bring it down to 45?

Mr. Edwards: Well, around one-third of the time is consumed in taking off that excessive field heat which the orange parts with comparatively readily because there is such a wide difference in the temperature of the room and of the orange.

Mr. Matthews: How long does it take to bring it from 45 to 33? What do your tests show on that?

Mr. Edwards: The balance of the 48 hours is consumed in that way. Possibly we could force it and bring it a little sooner, but we aim to pursue the methods that long experience by cold storage people have shown are perfectly safe.

Mr. Matthews: That is, bring it down to the even temperature slowly?

Mr. Edwards: Slowly, because there is a comparatively
1415 small difference between the temperature of the fruit and the temperature of the refrigeration, and so the interchange which Mr. Gay spoke of the other day must necessarily be very slow.

Mr. Matthews: What do you say as to the necessity of the carriers inspecting the fruit when you ship it pre-cooled and pre-iced and don't re-ice in transit?

Mr. Edwards: Well, we have tried in every earthly way we could devise some way to keep them from doing it, and it is a damage, because when they open those ventilators there is the immediate rush of hot air in and cold air out, and in my opinion that accounts for the fact that they may not ship a lot of their 40 degree fruit or 45 through without re-icing, because they are monkeying with the ventilators clear across the desert.

Mr. Matthews: You are content to let them leave it alone?

Mr. Edwards: Just shut it up and leave it alone.

Mr. Matthews: That is all.

Mr. Edwards: I would like, if your Honor will permit and the attorneys do not object, to—my veracity, or at least my judgment, was challenged here the other day in regard to this shipment. I have spent quite a little time since then in verifying my statements——

Commissioner Prouty: In what respect?

1416 Mr. Edwards: In regard to the fact that these passed through without re-icing and arrived with vents undisturbed. Now, we find in quite a number of cars they arrive with from two to three vent seals undisturbed, which would be conclusive evidence that they would be re-iced only in one end of the car, and probably one seal was broken for inspection, and then another broken for inspection, and so they did get a good deal of ventilation in spite of our instructions, and arrived there over one-half full of ice. Besides that, in other cars where we hadn't the seal record satisfactorily, I think there are about nine that are reported, so much ice in chunks. The railroad's method is to break up the ice; our method is to put it in solid chunks. Now, when a car arrives with the ice in solid chunks that is conclusive evidence that whatever may be charged they do not put any ice in. I can assure you that if we had broken one we would not have

loaded it but would have condemned it as unfit to load before we sent it out.

Mr. Norton: What is the purport of this complainant's Exhibit No. 40?

Mr. Matthews: A claim for reparation.

Mr. Norton: It doesn't show against what companies it
1417 lies. "Cars shipped by the East Highland Fruit Association during the season of 1907-1908, which cars were pre-cooled and pre-iced and on which the railroad collected refrigeration charges."

Commissioner Prouty: They are all shipped by the Santa Fe line.

Mr. Edwards: They are all shipped by the Santa Fe line. Our station is on the Santa Fe.

Mr. Matthews: They are all routed, then, by the Santa Fe?

Mr. Edwards: Yes, sir. I think there is on- P. F. E. car in the lot, but it went over that line. Before leaving I would like to correct an error I find on page — on one of the pages of the record of my testimony the other day. It showed that I said there was 19,339 pounds of ice in a car, average car, and that that was a little less than nine and one-half tons. Perhaps that was the basis of Mr. Maginnis' statement that I did not know what I was talking about.

(Witness excused.)

P. J. DREHER, recalled for the complainants, in rebuttal, testified as follows:

Direct examination:

Mr. Matthews: How many cars did your Exchange ship out during 1909 pre-cooled and pre-iced?

1418 Mr. Dreher: 146 pre-cooled and pre-iced.

Mr. Matthews: How were those cars loaded?

Mr. Norton: What exchange?

Mr. Dreher: The San *San* Antonio Fruit Exchange. They were all loaded seven boxes wide and two tiers high and the full capacity of the car.

Mr. Durbrow: How many cars did you say?

Mr. Dreher: 156 is right. There were two items here, and I got them wrong.

Mr. Matthews: How many of these cars moved prior to July 5th, the date of the tariff containing the $30 charge?

Mr. Dreher: 87 of these moved prior to the publication of the $30 rate.

Mr. Matthews: Have you examined the exhibit introduced by the Pacific Fruit Express purporting to contain a record of the icing of those cars that have been pre-cooled and pre-iced?

Mr. Dreher: I have.

Mr. Matthews: How many cars are on that list?

Mr. Dreher: There are 37 of the 87 cars on this list.

Mr. Norton: That is defendant's Exhibit 53 that I spoke of awhile ago.

Mr. Matthews: Leaving 51 upon which no claim was made that it was re-iced in transit?

Mr. Dreher: Yes, sir.

1419 Mr. Matthews: Have you checked up with your records, in so far as you have them, to show whether or not any ice was put in those cars?

Mr. Dreher: I have so far as time would permit and allow, and I find the P. F. E. Company claim car number 4755, shipped from Pomona to New Orleans on June 21, 1909, was iced at Los Angeles with 11,000 pounds of ice. Our record shows that we put 44 cakes of ice in that car, and the bunkers were loaded to their full capacity. That is the evidence of the ice company who furnished the ice, it is the evidence of our foreman that the ice was put in that car, I have the original documents here, and our inspector located at Colton, who is a salaried employé of the Exchange and has been there for a good many years, reports that car arriving at Colton with 10,000 pounds of ice in it, and I have his original report here.

Mr. Matthews: How much time elapsed between the time you put the ice in and the time they claimed to have re-iced it at Colton?

Mr. Dreher: From 6 to 12 hours.

Commissioner Prouty: Would that car move to Los Angeles?

Mr. Dreher: No, sir. Their records are faulty. The car would not come to Los Angeles, and the car never came here. In

1420 regard to the next car, number 5929, shipped by us April 19th to Pittsburgh, P. F. E. car, they claim that they put in 10,000 pounds of ice at Colton. I have the record here signed by our foreman that he iced that car with 44 cakes of ice, I have the record of the ice company that they furnished the ice, I have the record of the salaried inspector of the California Fruit Growers' Exchange, stationed at Colton, that that car arrived at Colton with 10,000 pounds of ice in it. Those are all the original documents.

Mr. Matthews: You seal some of your cars, do you not?

Mr. Dreher: Yes, we seal all of the cars that leave the packing house.

Mr. Matthews: Have you any record showing that any of your cars shipped pre-cooled and pre-iced arrived at their destinations with their seals intact?

Mr. Dreher: I have here the record of car number 5559, shipped by us July 14th, billed to the California Fruit Growers' Exchange, Louisville, Kentucky, arrived at Louisville on July 28th, with the ice bunkers one half full, with seals on the side doors, "S. P. Co. 21 P." and on four vents, "S. P. Co. 21 P.," which is the Pomona seal of the Southern Pacific Company.

Mr. Matthews: So that that car was fourteen days on the

1421 road in July and arrived with the bunkers half full of ice in Louisville?

Mr. Dreher: Yes, sir, with the original seal on the vents and side doors.

Commissioner Prouty: When was that sent?

Mr. Dreher: July 14, 1909, arrived at Louisville July 28th, 1909.
Mr. Matthews: What was the condition of the fruit?
Mr. Dreher: It was good.
Mr. Matthews: Will you please explain in what way you put the ice in the bunkers?
Mr. Dreher: It is put into the bunkers by a derrick. We have a derrick over both ends of the car. A man goes into the ice bunkers, and we let the cakes down with a derrick, and the man places them. Three of these cakes can be laid sideways into each end of the car and another cake is cut into three parts and put into the middle. In that way we pack the car full of solid ice and are able to put 44 blocks of ice into the car. There are 18 whole blocks used in each end of the car, three are cut into pieces and are put in the middle to fill in, and we break up one to scatter and fill in the top, making 44 cakes of ice. We lay them in carefully, and they
1422 are wedged in so tightly there is no vacant space whatever.
Commissioner Prouty: How much would those cakes weigh apiece?
Mr. Dreher: They are supposed to weigh 300 pounds. We put in more ice than the railroad company. We fill up the space solidly. We are careful not to chop off a little piece off the blocks, et cetera, and put a man down there for that purpose, to get them packed in absolutely solid.
Mr. Matthews: How much does the ice weigh you put in?
Mr. Dreher: 300 pounds to the cake.
Mr. Matthews: I mean the total weight.
Mr. Dreher: Six and one-half tons.
Mr. Matthews: Under whose advice and direction was that plant constructed—what experts did you have?
Mr. Dreher: The original expert consulted was Will B. Stevens; in addition to that we consulted Mr. Faget, and all the ice men of Los Angeles, Mr. Kinney and others, Mr. Halsted of Pasadena, and got such information as we were able to get from parties who had experience in pre-cooling and refrigerating fruit.
Mr. Matthews: What do you say to the claim of Mr. Sullivan that it injures fruit to bring it down to a temperature of 33 degrees and then let it go up again?
1423 Mr. Dreher: I would say, Mr. Sullivan is a man who has had no experience whatever, and his theories are all wrong. We have had many absolute tests, too, where the fruit was brought down to 33 and shipped and arrived safely and sound at the other end, and we know it has been raised in temperature and Mr. Sullivan's theory is all wrong. I do not think he ever shipped a car of citrus fruit. These were pre-cooled cars without ice. We pre-cooled the cars not knowing we were going to get reparation of these excessive charges, which were about $100 a car. We took the chances of risk of decay rather than pay those exorbitant charges. Those cars were billed vents closed to El Paso or Las Vegas and standard ventilation thereafter, and there is not a single car that arrived within ten days that was not absolutely sound and of the best condition.
Mr. Norton: What season was that?

Mr. Dreher: In April and May of last year. We shipped 195 cars in that way, without any ice whatever being used at any time, and I might state now that I think many of our shipments have been injured by the carrier opening the vents, either through ignorance or for whatever reason we don't know, because they were billed with vents closed to destination. We believe they have opened
1424 the vents and allowed the hot air to get in thinking they were ventilated shipments.

Mr. Norton: What was the temperature?

Mr. Dreher: Practically 33 on the inside of the car. It is our aim to bring it down to 33. We have a pre-cooling plant with six rooms, three of them with a capacity of six cars and three with a capacity of eight cars. Either room can be used independently, or they can be used in connection with each other. During the packing season when we are pre-cooling, after we have taken the fruit out of one room, it leaves the room about 35. We have but a small opening through which we take out the fruit, and as the fresh fruit goes in it goes into that cold temperature immediately, so that by evening, by the time we fill the room through the day, the temprature goes to 45 or 50, the fruit gradually absorbing the moisture, and then we close the room and put on the cold air and bring it by next morning down to a temperature of about 33. We find the fruit, though, inside the boxes which we have tested is not down to below 40, maybe 42 or 43, and therefore we keep the cold air going in there until we bring the fruit down inside of the boxes and all through the
1425 boxes to a temperature of 33, which we find takes from 36 to 40 hours operating with safety. We can blow that fan we have 24,000 cubic feet per minute and blow the air over the pipes and make it just as cold as anyone, but we don't believe it is safe to operate it any faster or make it any colder than we are doing.

Commissioner Prouty: How many boxes a day can you pack at your packing house?

Mr. Dreher: We can pack four thousand boxes a day. We could increase the capacity of that, but our normal capacity is about four thousand boxes. We have storage capacity there for 42 cars, and a normal four days' run, so that in case of a car shortage, in case of such an emergency as arose a couple of years ago when the Southern Pacific apportioned the cars among the shippers giving us, when we had eighteen cars of fruit packed in the house, one or two cars, and giving the small shipper who had one car in the house, one car,—under those conditions if we have a pre-cooling plant we can take care of our surplus and we can stop packing or bringing in fruit if we get our house overloaded, which we could not do without a pre-cooling plant.

Mr. Norton: The capacity of your cold storage room I understand is fourteen cars?

1426 Mr. Dreher: No, sir.

Commissioner Prouty: It is 42 cars?

Mr. Dreher: It is 42 cars. We have three rooms of six cars each and three of eight cars each. That is a nominal capacity, which could be crowded or overloaded if necessary.

FRANCIS Q. STORY, called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Call: What is your official connection with the California Fruit Growers Exchange?

Mr. Story: President.

Mr. Call: How long have you been connected with this Exchange?

Mr. Story: I think since about 1894 or 1895, that is, taking the predecessor, the Southern California Fruit Exchange, and this one, together.

Mr. Call: Were you present at an interview between some growers and members of the citrus leagues with the officers of the railways about a year ago?

Mr. Story: I was, a little over a year ago.

1427 Mr. Call: Did you hear Mr. Maginnis' testimony with regard to it?

Mr. Story: I did.

Mr. Call: What is your relation to that league?

Mr. Story: I am chairman or president of the Executive Committee of the League, the Citrus Protective League.

Mr. Call: And this League is larger in its scope than the Exchange?

Mr. Story: It takes in about ninety per cent of all the growers.

Mr. Call: That is not a marketing agency at all?

Mr. Storey: Not at all, no, sir.

Mr. Call: Simply looking after the general welfare of the industry?

Mr. Story: Yes, sir.

Mr. Call: Does the League keep a record of its meetings?

Mr. Story: It does.

Mr. Call: Was there a record kept of that meeting?

Mr. Story: There was not any regular secretary appointed, but, as I remember it, the meeting was held the day before our regular meeting, and the fact that no secretary was appointed, and also the fact that we felt it desirable that a record should be kept, Mr.

1428 Woodford wrote up, in consultation with others, everything that was done, and, as far as possible, everything that was said at that meeting, and it was put before the Board of the California Fruit Growers Exchange the following morning and was endorsed as being correct by the following members—shall I read them? It is practically all of the Board.

Mr. Call: Well, all those names that appear there?

Mr. Story: Yes, it is virtually all of the Board.

Mr. Call: And were those minutes promulgated of all of the members as a report of the meeting?

Mr. Story: Yes, sir.

Mr. Call: Sent out to all of the growers who are members of the Exchange.

Mr. Story: Should have been, and I believe it was.

Mr. Call: It was done at that time?
Mr. Story: It was done at that time.
Mr. Call: Which was one of the copies made at that time?
Mr. Story: It was one of the copies made at that time.
Mr. Durbrow: Not a stenographic report?
Mr. Call: Not a stenographic report.
We will offer it in evidence.

Mr. Norton: I object to its being offered in evidence be-
1429 cause it is not a verbatim report of what took place. Mr. Story might be interrogated as to what took place in the meeting, particularly in contradiction of Mr. McGinnis' statement which was said to be incorrect. I think, however, to support his view and contradict Mr. McGinnis by a paper of this sort is incompetent.

Commissioner Prouty: You were present at the meeting with the railroad officials?
Mr. Story: Yes, sir.
Commissioner Prouty: Did you hear read this document on the morning afterwards?
Mr. Story: I did.
Commissioner Prouty: Do you know whether it is correct or not?
Mr. Story: To the best of my knowledge and belief it is absolutely correct.

Commissioner Prouty: I think, Mr. Norton, that might be filed as a memorandum tending to show what was done there, written out the morning afterwards and while the whole matter was fresh in his mind and it correctly stated what was done.

Mr. Norton: Is that more competent than his evidence?
1430 Mr. Call: I will go through it if necessary.

Commissioner Prouty: The shortest way would be to hand it in and file it. We might file it as a memorandum. As a legal proposition you probably would be obliged to testify, referring to that as a memorandum.

Mr. Norton: I understand that Mr. Story was put on here to show that Mr. McGinnis' statement was not correct. I would like to have Mr. Story do it by his own speech.

Mr. Call: I can do it but I was simply trying to save time.
Will you state what transpired there—in the first place, who called the meeting?
Mr. Story: The meeting was called by the Protective League at the request of the two or three initial lines. I think all three joined in.
Mr. Call: And at the meeting what subjects were discussed?
Mr. Story: Pre-cooling, or refrigeration, rather.
Mr. Call: And the right to pre-cool and pre-ice?
Mr. Story: I think so.
Mr. Call: Now, what was the request preferred by the shippers?

Mr. Story: If I may read certain portions of this——
1431 Commissioner Prouty: You may read that as regards the testimony.

Mr. Story: That will perhaps clear that up and no objections will probably be made. I don't think Mr. Norton will have any objection to that being done. I have no idea Mr. McGinnis made a wrong

statement intentionally, but I do think he was mistaken. "The chairman called upon Mr. Call, representing the Citrus Protective League, to make a statement in behalf of that organization. Mr. Call went over conditions fully as they exist with reference to refrigeration of our fruit in an address of some twenty minues, concluding by requesting first, that the initial lines continue with the installation of their own pre-cooling plants; second, that where the shipper pre-cools his own fruit and furnishes his own initial icing with instructions not to re-ice such shipment in transit, no charge either for refrigeration or freight on ice be made, the carrier being absolved from all liability as to refrigeration." There is the contradiction.

Mr. Norton: Did Mr. McGinnis say in his testimony that was not done?

Mr. Story: So I understand.

Mr. Norton: I did not. That does not contradict Mr. Mc-
1432 Ginnis.

Mr. Call: Very well.

Mr. Story: Shall I read the balance of that matter?

Mr. Norton: You might file it and let us have a copy of it.

Commissioner Prouty: Yes, let us have a copy of it and file that memorandum.

Mr. Durbrow: It better be copied into the record.

(The document referred to was received in evidence and thereupon marked Complainants' Exhibit No. 41, received in evidence March 29, 1910, and same is attached hereto.)

(Said document reads as follows:)

Office of California Fruit Growers Exchange.

Los Angeles, Cal.

Memorandum

Of what transpired at a meeting of the representatives of the initial lines with citrus fruit shippers of California, said meeting being held in the Directors' Room of the Exchange, 832 H. W. Hellman Building, on Saturday, February 13, 1909.

The meeting was called by Mr. A. G. Kendall, of the
1433 Citrus Protective League at the request of Messrs. Barnwell and Graham, representing the Santa Fe and Southern Pacific railroads respectively.

Mr. F. Q. Story, as chairman of the Citrus Protective League, acted as chairman of the meeting.

There were present Messrs. Ripley, Barnwell, McGinnis and Dunn representing the Santa Fe; Messrs. McCormick, Graham, Bechrist and Mortensen, representing the Southern Pacific, and Mr. Wann, representing the Salt Lake.

Mr. A. G. Kendel represented the Citrus Protective League.

On the part of the Exchange, there were present all of its Board of Directors, with the exception of Sprott, and Messrs. Woodford,

Dezell, Edwards, Davis, and two or three others, making about 20 all told.

On the part of non-Exchange shippers, there were present Messrs. Lyon, Garstin, Gregory, Lefferts, Ruggles, Chase, Green, Speich, Phillips, Winsole, Randolph, Wilson, Pinkham, Chapman, and various others, amounting to about thirty.

Mr. Story as Chairman, stated that the meeting had been called by the Protective League at the request of the representation of the initial lines to consider the subject of refrigeration of citrus
1434 fruits and introduced President Ripley. Mr. Ripley stated briefly that the roads were prepared to install pre-cooling plants of their own but that some of the shippers appeared to think that fruit could be cooled more successfully at the point of packing than at one or two assembling points as planned by the railroads and that it had been deemed wise to get the shippers together in a meeting and have a free discussion of the subject.

The chairman asked Mr. McCormick if he had anything to say on the subject, the latter declining at that time, inasmuch as President Ripley had so well stated the case.

The chairman called upon Mr. Call, representing the Citrus Protective League, to make a statement in behalf of that organization. Mr. Call went over conditions fully as they exist with reference to refrigeration of our fruits in an address of some twenty minutes, concluding by requesting—

1. That the initial lines continue with the installation of their own pre-cooling plants.

2. That where the shipper pre-cools his own fruit and furnishes his own initial icing with instructions not to reice such shipments in transit, no charge either for refrigeration or freight on
1435 ice be made, the carrier being absolved from all liability as to refrigeration.

3. That in view of the fact that by pre-cooling oranges the minimum weight could be increased at least 64 boxes to the car, or approximately 15 per cent, thus increasing the freight revenue of the railroads, the saving in ice and benefits to the carriers through pre-cooling should be partially given to the growers in a reduced refrigeration charge to $50 per car flat rate to all markets applicable to all shippers and covering pre-cooling initial and transit icing.

At the conclusion of Mr. Call's statement the chairman asked Mr. Lyon to likewise make a statement on behalf of the League. Mr. Lyon's talk was along the same lines as that of Mr. Call, with special emphasis being put on the necessity of the initial lines proceeding at once with the erection of their precooling plants.

The chairman asked if any other person wished to make a statement on this subject and Mr. Speich made a few remarks upon the necessity of the immediate erection of pre-cooling plants by the carriers, from the standpoint of independent shippers.

Mr. McCormick made some statements with reference to freight on ice being considered in the making of a rate. In other
1436 words, that the freight rate itself, the refrigeration charge, and all items of expense charged by the carriers against a shipment, were considered as a whole and not separately and that

all rates were based on the cubic contents of the car space required and the value of the article transported. Mr. McCormick also asked some questions of Messrs. Edwards and Dreher with reference to their pre-cooling plants at East Highlands and Pomona respectively, bringing out the point that on the East Highlands shipments many cars pre-cooled and pre-iced arrived at destination with bunkers from 1-3 to 2-3 or even 3-4 full of ice. This without any icing in transit. Mr. Dreher stated that with reference to this whole matter of pre-cooling and pre-icing shipments, the shipper in asking for no charge either for freight on ice or refrigeration where the carrier furnished nothing and cars were not re-iced in transit, the extra 64 boxes loaded in such cars gave the carrier a freight rate per gross ton equivalent to the freight rate per gross ton on a ventilated shipment. This notwithstanding the fact that some seven thousand pounds of ice is carried on the average in such pre-cooled and pre-iced shipments.

1437 Mr. Phillips of the Citrus Union made a statement on behalf of his company emphasizing their wish that the initial lines should immediately proceed with the erection of their pre-cooling plants and his remarks, being quite extended on that subject, the chairman called his attention to the fact that the meeting was unanimous in this respect.

In fact the entire meeting appeared to be unanimous in so far as the growers and shippers were concerned on all the requests made of the transportation companies, as stated by Mr. Call and Mr. Lyon, no objection being made on the part of any shipper or grower present to any one of three separate requests.

Mr. Ripley announced that he would be in California for some time and that a decision would be given in these matters in the near future.

After a session of some two hours, the meeting, which had been harmonious in every respect, was adjourned.

S. J. Beals
W. G. Frazer
W. H. Jameson
D. C. King
John Scott
W. P. Russell
E. F. Van Luven
P. J. Dreher
D. E. Huff
J. L. Paul
F. Q. Story
Josephus Husdon
A. G. Simonds.

1438 Commissioner Prouty: My understanding is the railroads were not induced by the shippers at that time to erect these plants, with the representations that they did not desire to pre-cool their own shipments, and preferred to have the railroads do that, for it appears by this statement that the shippers did at that time attempt to pre-cool and pre-ice their own cars.

Mr. Durbrow: We had these two plants at that time.

Commissioner Prouty: But you didn't erect them on the strength of that meeting?

Mr. Durbrow: I mean the shippers had the two plants at that time.

Mr. Norton: You heard Mr. McGinnis' testimony, did you, Mr. Story?

Mr. Story: I did.

Mr. Norton: My line of interrogation was this: Then President Ripley had, upon the representations of the shippers, ordered the construction of a plant at San Bernardino, subsequently, after having an interview with you and some others at Santa Barbara, he called Mr. McGinnis and the general purchasing agent, Mr. Hodges, over to Santa Barbara and ordered them to start the work of constructing that plant because you had shown to him that the people generally wanted to have their own plants. Finding, from
1439 some source or other, that there was some doubt on that subject, a meeting was called here in Los Angeles, Mr. Ripley came over to attend that meeting, and there *is* appeared on behalf of a great many shippers, probably a majority of them, that they insisted that the Santa Fe and Southern Pacific lines perform their duties as common carriers and furnish refrigeration and they wanted to be protected by our constructing a pre-cooling plant and that Mr. Ripley said to you that the developments of that meeting were entirely contrary to what he had understood at Santa Barbara when you and some others called upon them. Is that correct?

Mr. Story: I want to say, Mr. Ripley said so, but I didn't understand it but otherwise, so far as pre-cooling goes, the minutes will show who spoke in favor of pre-cooling as done by the railroads.

Mr. Norton: I would like to have your answer. And Mr. Ripley taxed you with his having got a different idea once at Santa Barbara from the idea you got at this meeting with respect to the wishes of all the shippers.

Mr. Story: I never expressed the wish of all the shippers to him, so he couldn't very well. I will say this——

Mr. Norton: With respect to the wishes of a majority
1440 of the shippers?

Mr. Story: —that he did claim there that it was not so generally desired as he had understood me to give the impression, as the impression I had given him.

Commissioner Prouty: That is, that the shippers did not so generally desire to cool their own shipments?

Mr. Story: I put it rather, if I may, the other way, that there was not more of them, a larger majority of them who desired to have the Company go on with the pre-cooling plants, and that telegram which he sent stopping the work was sent—He suggested it to me and I said to him at the time in Santa Barbara I thought it would be wise to withhold all additional work. He said some machinery had been gotten and I suggested that the shipping of it be stopped until a further hearing which we intended to have with the people in Chicago.

Mr. Norton: Could you recall how many were at that meeting?

Mr. Story: I should say something like fifty or more, altogether.

Mr. Norton: A considerable majority of the producers represented there insisted that the Santa Fe people build this pre-cooling plant?

1441 Mr. Story: Most decidedly not, unless it was expressed by not speaking. I don't think half a dozen spoke of it at all; at least only half a dozen of the fifty spoke.

Mr. Norton: I mean by organization. I don't suppose every grower spoke. Measuring by organization.

Mr. Story: I think that the people belonging to the Exchange, as a rule, were in favor of the pre-cooling plant, but it seems to me there are many of those who probably would be very glad to have the railroads put up that pre-cooling plant. I mean many of the Exchange were in favor of their own—being allowed to put up their own precooling plants?

Mr. Norton: I think that is correct, as I understand Mr. McGinnis' testimony. That is all I care to ask.

Mr. Call: I desire to correct what might perhaps be an erroneous impression with regard to the figures produced by Mr. Butler as to the cost of producing lemons in California. I want to read from a small paragraph of explanation from the brief presented to the ways and means committee from which he obtained his figures, explanatory of the figures there furnished.

Mr. Durbrow: I have no objection to having Mr. Call file
1442 that entire brief. I think it would settle the entire situation. It is a very small brief and I think it would be instructive to the Commission.

Commissioner Prouty: You can do as you choose, Mr. Call, you may file the brief and ask to have that portion of it incorporated in the record.

Mr. Call: Very well. I will file the brief and ask to have this paragraph incorporated, being at the bottom of page 4; this is the statement: "These figures represent the minimum cost, for as a rule a large grove can be handled more economically than a small grove and the cost is usually cheaper in proportion to the production of the property." It only purported to give those few large groves and did not purport to give the whole industry.

(The paper referred to, so offered, was received in evidence and thereupon marked Complainants' Exhibit No. 42, received in evidence March 29, 1910, and same is attached hereto.)

Mr. Call: I have here a total, I am not sure whether I introduced it or not, as our reporter has no record of it. It is the average price per pound paid by growers and the average percentage of decay running over a series of about fifteen years, and I
1443 would like to offer it now and have it marked as an exhibit.

Mr. J. H. Call: Mark that in the record and mark it Exhibit No. 101.

(The statement last referred to, so offered, was received in evidence and thereupon marked Complainants' Exhibit No. 43, received in evidence March 29, 1910, and same is attached hereto.)

Mr. Durbrow: I would like to have a copy of the Exhibit No. 5, the first exhibit. They did not incorporate Number 5 in that Exhibit, they stated it had not been printed.

Commissioner Prouty: It was subsequently printed and circulated.

Mr. Call: We can give you another one. I did circulate three or four of those. I can give you another one. I would like also to incorporate this extract from the Santa Fe Company's answer in the handling cost of the lemon case.

(The paper referred to, so offered, was received in evidence and thereupon marked Complainants' Exhibit No. 44, received in evidence March 29, 1910, and same is attached hereto.)

Mr. Norton: You put in one of those.

1444 Mr. Call: This was omitted. Mark it complainants' Exhibit 102. I also desire to offer a statement comparative of business, showing the citrus movement for the calendar year and the loaded and empty mileage on P. F. E. cars as shown in the two exhibits we now offer.

Mr. J. H. Call: Mark them Complainants' Exhibits 103 and 104.

(The statements referred to, so offered, were received in evidence and thereupon marked Complainants' Exhibits Nos. 45 and 46, received in evidence March 29, 1910, and same are attached hereto.)

Mr. Call: We also offer in evidence this statement to go into the record for what it is worth, plaintiffs' Exhibit 105.

(The statement referred to, so offered, was received in evidence and thereupon marked Complainants' Exhibit No. 47, received in evidence March 29, 1910, and same is attached hereto.)

Mr. J. H. Call: We have been furnished with copies of the annual report of the President of the Atchison, Topeka & Santa Fe Railway Company, and we desire to offer some extracts from the report of 1909 as to the conditions, as to the fiscal year June 30, 1909, and to expedite the hearing I will refer to the pages of this

1445 report and the marked portions that we desire to offer and the reporter can copy it in. The extracts marked at pages 6, 11, 15 and 39 of said report, said report to be marked plaintiffs' Exhibit 106.

(The paper referred to and offered in evidence was received in evidence and thereupon marked Complainants' Exhibit No. 48, received in evidence March 29, 1910, and same is attached hereto.)

Commissioner Prouty: Those extracts will appear in the record itself?

Mr. J. H. Call: Yes, sir.

(The extracts from said record are as follows:)

"Income Statement.

The following is a summary of the transactions of the System for the years ending June 30, 1908 and 1909:

	1908.	1909.
Total operating revenues	$90,617,796.38	$84,265,716.87
Income from other sources	65,031,582.67	61,458,019.13
Income from all sources	91,289,770.61	95,424,091.89
Expenses, including taxes, rentals and other charges	65,031,582.67	61,458,019.13
	26,258,187.94	33,966,072.76
	$26,258,187.94	$33,966,072.76
Fixed charges, including accrued interest on Adjustment Bonds	12,597,301.77	13,548,081.93
Balance	$13,678,886.17	$20,417,990.83

From the net income for the year the following sums have been deducted:

Dividends on Preferred Stock—		
No. 21 (2½%) paid Feb. 1, 1909	$2,854,345.00	
No. 22 (2½%) paid Aug. 2, 1909	2,854,345.00	
		$5,708,690
Dividends on Common Stock—		
No. 16 (2½%) paid Dec. 1, 1908	2,573,912.50	
No. 17 (2½%) paid June 1, 1909	2,578,637.50	
		5,152,550.00

Appropriation for Fuel Reserve Fund		158,230.11	
Appropriated for Additions and Betterments—			
Expended during year	$4,000,000.00		
Reserved for future expenditures	5,000,000.00		
		$9,000,000.00	
			$20,019,470.11
Surplus carried to Profit and Loss			$398,520.72
Surplus to credit of Profit and Loss June 30, 1908		$20,352,865.50	
Amount written off property accounts in respect of expenses and discount on bond sales	$1,487,500.00		
Grade Revision Work—			
Abandoned Line	541,888.56		
	2,029,388.56		
Additions to Profit and Loss Account—net	99,253.08		
		1,930,135.48	
			18,422,730.02
Surplus to credit of Profit and Loss, June 30, 1909			$18,821,250.74"

1447

1448 *Maintenance of Equipment.*

The following statement shows the sums charged to Operating Expenses for Maintenance of Equipment during each year since July 1, 1896:

Year ending June 30—	Average operated mileage.	Total expenditure.	Expenditure per mile.
1897	6,443.81	$3,443,884.82	$534.45
1898	6,936.02	4,659,277.99	671.75
1899	7,032.62	4,810,795.64	684.07
1900	7,341.34	5,267,832.40	717.56
1901	7,807.31	6,257,456.57	801.49
1902	7,855.38	7,864,951.25	1,001.22
1903	7,965.13	8,510,543.09	1,068.48
1904	8,179.59	10,006,135.41	1,223.31
1905	8,305.40	10,914,864.47	1,314.19
1906	9,433.99	10,720,040.43	1,271.05
1907	9,273.15	11,779,846.64	1,270.32
1908	9,415.01	14,246,621.44	1,513.18
1909	9,794.86	13,903,897.37	1,419.51

For the year ending June 30, 1909, maintenance charges, including renewals and depreciation, averaged as follows:

Per locomotive	$3,132.76
Per locomotive mile	.1195
Per passenger car, including mail and express	1,134.00
Per passenger car mile	.0117
Per freight car	120.41
Per freight car mile	.0111"

1449 "The following statement shows the gross operating revenues of the System Lines (exclusive of income from other sources) per mile of road operated for each fiscal year since July 1, 1896:

Year ending June 30—	Gross operating revenues.	Average per mile of road.
1897	$30,621,230.10	$4,752.04
1898	39,214,099.24	5,653.69
1899	40,513,498.63	5,760.80
1900	46,232,078.23	6,297.49
1901	54,474,822.61	6,977.41
1902	59,135,085.53	7,527.97
1903	62,350,397.28	7,827.92
1904	68,171,200.18	8,334.31
1905	68,375,837.25	8,232.70
1906	78,044,347.25	9,253.55
1907	93,683,406.91	10,102.65
1908	90,617,796.38	9,624.82
1909	94,265,716.87	9,624.00"

1450 *"Train and Car Statistics for Years Ending June 30, 1909 and 1908.*

	1909.	1908.
Train Mileage:		
Freight	18,519,422	19,455,221
Passenger	16,235,342	16,227,670
Mixed	2,531,315	2,341,946
Special	84,612	86,522
Total	37,370,691	38,111,359
Car Mileage:		
Freight cars in Freight Service.	592,908,424	584,160,959
Passenger cars in Passenger Serv.	113,684,511	110,735,296
Total	706,592,935	694,896,255
Freight car mileage subdivided:		
Loaded:		
East or North	205,405,346	198,653,189
West or South	214,481,854	215,602,473
Total	419,887,200	414,255,662
Empty:		
East or North	88,768,508	94,665,747
West or South	84,252,716	75,239,550
Total	173,021,224	169,905,297
Work Train Mileage:		
Freight Class	1,598,121	1,657,770
Passenger Class	104,952	104,129
Total	1,703,073	1,761,899"

1451 Mr. Matthews: I want to offer a statement of the Santa Fe Refrigerator Dispatch Company.

(The statement referred to, so offered, was received in evidence and thereupon marked Complainants' Exhibit No. 49, received in evidence March 29, 1910, and same is attached hereto.)

Mr. Matthews: We have also, your Honor, the contracts, you expressed some desire to be kept out of the book. Mr. Durbrow said he wanted them in. I will do as you wish in that respect.

Mr. Durbrow: Those are contracts of the Pacific Fruit Express?

Commissioner Prouty: Those contracts are only available as showing the cost of ice.

Mr. Durbrow: It shows the condition under which we purchased the ice.

Commissioner Prouty: You may state, Mr. Durbrow, what your Company pays.

Mr. Durbrow: It is shown in the contract, that is why I have not made any contracts. We have had arranged a complete set of contracts with the Pacific Fruit Express and we would like to have the reference to the entire contract in writing our brief.

1452 Commissioner Prouty: Those contracts may be admitted, too.

(The papers last referred to, so offered, were received in evidence and thereupon marked Complainants' Exhibits 50 and 51, received in evidence March 29, 1910, and same are attached hereto.)

Mr. Norton: Is there any difference in filing them or having them marked for reference? I do not like to have these burden the record.

Commissioner Prouty: It may be offered for reference. They may be filed for reference, although the connection of those is more important.

Mr. J. H. Call: We would like leave to have filed for reference, in the same manner, the annual reports of the Atchison, Topeka & Santa Fe Railroad Company and the Southern Pacific Company with the various ice companies, covering the years from 1901 to 1908 inclusive, and to be marked with a corresponding exhibit number.

Commissioner Prouty: These may be marked for reference only.

(The papers last referred to, so offered, were received in
1453 evidence and thereupon marked Complainants' Exhibits Nos. 52 to 65, both inclusive, received in evidence March 29, 1910, and same are attached hereto.)

Mr. Call: Those may be marked for reference only, but we would like to have it understood that we can refer on brief and argument to the reports of the Southern Pacific Company and the Commission. We have not been furnished with data showing certain income accounts of that company.

Mr. Durbrow: We have furnished you with a complete statement of the different years called for in your demand.

Mr. Call: We would like to have leave to refer to the reports on file.

Mr. Durbrow: I do not object to your referring to the reports on file, but I do not like to be charged with not furnishing information I have on hand.

Mr. Matthews: We have a demand on the Santa Fe Refrigerator Dispatch Company, following the testimony of Mr. Leeds, asking for certain information. It is quite in detail and I will give a copy of it to Mr. Norton to examine it and see if there is any objection to producing it.

Commissioner Prouty: How long will it take you to produce that information?

Mr. Norton: I do not know. I want to furnish everything
1454 reasonable at our own expense, but we have furnished a vast amount of information.

(Discussion.)

Commissioner Prouty: Now, it will take a great deal of time to furnish those items and it hardly seems as though it would be worth while.

Mr. Matthews: What we have in mind, is this, your Honor; that while this ice is shipped in and it is claimed it made this expensive service, and we want it proportionate according to the month. We use very little ice in the hot weather and some other shipments use a great deal and we want to get that proportion and we want it changed each month.

Commissioner Prouty: That is, you want to get the first chance at it?

Mr. Camp: There is no evidence that the Santa Fe had shipped anything in. The contractors had some shipped in.

Commissioner Prouty: The Santa Fe Dispatch bought this ice of the Santa Fe Company and it paid the Santa Fe Company what it paid for ice when they went up north and brought the ice in. My understanding is that the Santa Fe paid more for the ice than if it was stored, it paid the cost of hauling and the cost of ice.

1455 Mr. Norton: They ask for the number of tons of ice used monthly.

Commissioner Prouty: We must assume that this company got this ice as cheaply as it could under the circumstances, unless it appears there are some contracts——

Mr. J. H. Call: I don't think we can do anything else but assume, as business men, they did the best they could, unless it was done by their own officials.

Commissioner Prouty: The Santa Fe has made arrangements to get ice cheaper than it did before.

Mr. Norton: Some of these contracts were made fifteen years ago when this was quite a different town from what it is now.

Commissioner Prouty: Yes. You take that statement and let Mr. Leeds furnish the answers to these inquiries which will be most material and which can be furnished without too much trouble.

Mr. Norton: Very well. I have, since you speak about it, printed series of blue-prints, showing the profile with the elevations, grades, and so forth, from here to Albuquerque. We have not anything beyond that. This would include everything now, except that one grade on the Belden cut-off and we will file these for reference merely.

1456 Mr. Call: I wish to have an understanding what we may do in regard to this icing proposition.

Mr. Norton: We are not quite through. I have a few things.

(The blue prints last referred to were received in evidence and thereupon marked Defendants' Exhibit 53, sheets 1 to 7, both inclusive, received in evidence March 28, 1910, and same are attached hereto.)

Commissioner Prouty: Let us put everything else in.

Mr. Norton: I believe we have been referring to the reports of Professor Powell of the government service. I was going to take Mr. Hodges' deposition concerning the ice, and I see the statement——

Mr. Call: With regard to Mr. Powell's report, now, his original report was made from one grove and when the Ways and Means Committee took this up for consideration they called him in again and asked him to explain where he got that report and what the fact was with regard to it in a general way and he made some statements there into the record which I would like to have considered with the report as to lemons.

Commissioner Prouty: I do not understand that Mr. Powell's report as to cost of production was material but as to the
1457 method of handling and refrigeration.

Mr. Call: As far as that is concerned, we would like to have it used, but he gave some costs of production that would be misleading as a general average.

Comm. oner Prouty: We will admit Mr. Powell's report as far as the handling and refrigeration is concerned.

Mr. Call: Yes.

Mr. Norton: I have a note here to file a total of pre-cooled cars.

Commissioner Prouty: They are supposed to be filed already.

Mr. Norton: That is all, except I would like to leave the thing open so that possibly, if I should want to, I might take a deposition in Chicago. I don't think I shall, but if in going over this record I should want to cover any point, maybe I will have to take a deposition. I probably won't do it.

Commissioner Prouty: I shall be in Kansas City a week beginning April 18, but if you desire to take any testimony in Chicago I will give you a day the latter part of that week and you can take the testimony before me on my way back to Washington. If, in looking over this record, there seems to be any defect in the record you wish to supply I will give you gentlemen a day at Chi-
1458 cago the last of the week of April 18th.

Mr. Norton: I am attaching to those blue-prints of the profile I have filed, Nos. 1 to 7 inclusive, a little clipping from one of our folders showing in a form the profile and diagram from Chicago west and showing also the comparative profile of the Belden cut-off, over which this fruit now moves.

Commissioner Prouty: Is that all?

Mr. Norton: That is all.

Commissioner Prouty: Have you anything more, Mr. Durbrow?

Mr. Durbrow: Nothing more.

Commissioner Prouty: We will consider what tests should be made as to refrigeration and how the tests should be made and in the first place, as to those shipments which the packers pre-cool and pre-ice. You have both a tariff in which it is provided that shipments may be pre-cooled and pre-iced for a charge of $30, as I understand it—it is some charge.

Mr. Durbrow: That is correct.

Commissioner Prouty: The theory of the charge is that the shipment shall be pre-cooled and pre-iced and the bunkers and
1459 the vents sealed up and the shipment sent through. It seems to me, that the packer should be allowed, in some way or other, to make certain that those shipments have gone through without any opening of the bunkers or the vents or the doors and it ought to be possible to seal it with a seal of this packing house at Pomona and Highlands, the vents and doors; and the railroads should give instructions to their employees to be careful that those instructions are observed, not to break those seals. Is there any objection to that, Mr. Norton?

Mr. Norton: None at all.

Commissioner Prouty: Mr. Durbrow?

Mr. Durbrow: None at all.

Commissioner Prouty: Does that suit you, Mr. Call?

Mr. Call: That suits us. We will have a seal prepared and our inspectors will keep a record at every station in regard to that seal.

Commissioner Prouty: In addition to that the Commission would like to know the amount of ice that is used in those cars. Would it be a fair test if you used some line like the Santa Fe to determine the amount of ice that it would take to refrigerate a car from here to Chicago by the Santa Fe.

Mr. Call: I think that would be the fairest way.

1460 Mr. Durbrow: It takes a great deal more ice for the P. F. E. cars, the bunkers are larger and more ice is put into the cars.

Mr. Call: You move by colder route.

Mr. Durbrow: Some is by a colder and some is by a warmer route.

Mr. Call: The northern route would be the cooler. We do not use the southern route much at this time of the year.

Commissioner Prouty: Well, your bunkers take more initial ice. Do you have an idea they take more ice for the icing from here to New York or Chicago?

Mr. Durbrow: Mr. Mortensen suggests that the Santa Fe have a through line to Chicago and our shipments are routed via any number of eastern connections and through different gateways, and shipments will move that way, and will move that way while these tests are being made, and will move that way after the charges have been finally fixed by the Commission, and for our own information, as well as for the Commission's, we would like to have tests made over our line as well as over the Santa Fe, and we will afford every facility possible to enable the shippers to make their tests in their own cars and recognize any reasonable demand they may
1460½ make, but we would like to make some tests on our own account and I think your Honor suggested that some of the Government inspectors might like to——

Commissioner Prouty: I think the Commission would like to send its own inspectors to observe the quantity of ice used and my suggestion would be that we station an inspector of the Commission at each icing station on the Santa Fe between here and Chicago;

the Santa Fe Express has their man at each icing station and the fruit growers, as I understand it, have an inspector and these three parties, representing the shipper, the railroad and the Government would unite in ascertaining the amount of ice actually put into the bunkers of the car. In order to make that test a fair one, what month ought to be selected?

Mr. Norton: I thought it was going to be followed for a year?

Commissioner Prouty: Not for a year, but my own thought was we should take it one week in perhaps April, May, June and July, and that we should select a representative month.

Mr. Norton: Mr. Chambers agrees to that, April, May, June and July.

Mr. Durbrow: We would like to have those tests made on our own line, if your Honor please, for some of the time. Could it
1461 be arranged to have two weeks in each of those two months on the Santa Fe and two weeks in each of those months on the Southern Pacific?

Commissioner Prouty: My idea was it would not be necessary to run an entire month, but we could take the first or second week of the month and perhaps the second week in April—it will be impossible for me to tell until I get back to Washington when we can have our inspectors on the ground—it might be necessary to take the last week in April and the first week in May. Now, Mr. Durbrow, couldn't your Company, in connection with the representative of the fruit growers, make such tests as you desire?

Mr. Durbrow: We would be very glad to. Mr. Dreher is located on our lines, and his cars would naturally be routed over our lines——

Commissioner Prouty: Mr. Dreher's cars would go over your lines naturally. Those are pre-cooled shipments which will go by your lines, and we shall know in what condition they arrive at destination and you will take care of it that the seals are not broken in transit. The Highlands shipments will move via your line. It seems to me that the tests could be made better via the Santa Fe line, since cars move via one route and the quantity of ice
1462 must be substantially the same by your line as the Santa Fe. Anyway, you can make such tests as you desire and if you do not agree about that we will see that the Government inspectors go on your line also.

Mr. Call: In that connection, with that exception—tests in order to get any degree of accuracy I have an idea it would be necessary to let someone go along with the train, because our experience is those train crews do not always obey instructions with regard to that vent service. They sometimes open vents. We give instructions and I know the railroad time and again order them to be careful to observe the vent instructions on bills and yet they will go and open cars that were ordered vents closed.

Commissioner Prouty: But your cars will be sealed.

Mr. Call: We will know that. But in regard to their cars that will be iced.

Commissioner Prouty: You have a man at every station and you

know the quantity of ice put in at every station. If they open the vent it takes more ice, I suppose.

Mr. Call: And that is what we do not want to show, more ice.

Commissioner Prouty: Well, that is, they might open the
1463 vents?

Mr. Call: They might accidentally open those vents and melt the ice across the desert. I don't think they would do it on purpose.

Commissioner Prouty: There would not be enough of that.

Mr. Call: We can send a man along, though, to watch.

Commissioner Prouty: If you think it is necessary you can let me know. Has it occurred to you that would be a satisfactory test if that program is carried out?

Mr. Call: I think it will be the best we can get.

Mr. Norton: That suits me.

Commissioner Prouty: I will endeavor to have our inspectors at the Santa Fe icing stations between here and Chicago in the last weeks of April, May, June and July and they will make their report direct to the Commission and your people make your report direct to the Fruit Growers of the Exchange.

Mr. J. H. Call: That will not be sworn testimony until after it is put in?

Commissioner Prouty: No, it will not be sworn testimony, but the railroad and the fruit growers and the Commission will all be there together.

Mr. Halsted: How will that be brought to the attention
1464 of the Commission and parties here? Will there be another hearing to produce this evidence?

Commissioner Prouty: I hardly see how there is any necessity for another hearing unless some testimony arises as to the accuracy of the tests.

Mr. Halsted: How will a comparison be made of the tests? Your Honor has suggested that the reports will be made to the parties.

Commissioner Prouty: The parties will all know how much ice is used.

Mr. Halsted: Yes, but the reports of the Commission will be made to the Commission and they will not be furnished to us.

Commissioner Prouty: I take it everybody will know how much ice is put in a train. There will be three parties there and they will all agree how much ice is put in so that if any question arises it will be stated there.

Mr. Halsted: I presume that is true, if there is any discrepancy.

Commissioner Prouty: If there is any dispute arises it will be necessary to have some further hearing. If this fruit in these cars
that are pre-cooled and pre-iced arrives in good order it
1465 will be necessary to have some further hearing.

Mr. Call: These tests are to be made in April and May?

Commissioner Prouty: One in April, one in May and one in June and July. You ship oranges in June, but not many in July.

Mr. Call: Yes, and the month of May would not need much ice.

Commissioner Prouty: Yes. Perhaps April, May and June would be——

Mr. Call: Yes, that is the time it moves.

Mr. Norton: I think we better leave it as it was.

Mr. Call: Of course, in July we have not much fruit moving and it consumes a great deal of ice.

Commissioner Prouty: But we want to determine how much ice is used in July as well as in June.

Mr. Norton: Shall we keep a report with your men?

Commissioner Prouty: No, I think you better keep a separate report and the fruit growers also. When will you argue this case in Washington? Will Wednesday the 11th of May be satisfactory?

Mr. Call: It will be satisfactory to us.

1466 Mr. Norton: That is a pretty short time to get our briefs in.

Commissioner Prouty: How much time, Mr. Call, will you require for preparation and service of the briefs?

Mr. Call: We have the testimony now, only we haven't the references and after we get the testimony they would not be paged the same, I suppose, but we can get that ready by the——

Mr. J. H. Call: Is it usual to serve briefs on argument?

Commissioner Prouty: No. We generally require the plaintiffs to brief the defendants and the defendants to brief the plaintiffs previous to argument.

Mr. Call: We will divide the time with them.

Commissioner Prouty: Will three weeks be sufficient time for you?

Mr. Call: Yes, that will be sufficient time for us.

Commissioner Prouty: You will brief then by Saturday the 7th of May, Mr. Norton?

Mr. Norton: That gives us about three weeks. Yes.

Commissioner Prouty: The complainants may have until Tuesday, April 19th in which to make service of their brief on the defendants and the defendants may have until Saturday, May

1467 the 7th, in which to make service of their brief upon the complainants. If either party desires to file a reply brief that privilege will probably be given on the argument and you will probably be allowed to file a brief after the argument. While the refrigeration question cannot be decided at this time, you ought to discuss it in your brief and your argument before the Commission. I will set the case down for argument on Wednesday, May the 11th, at Washington, at 11 o'clock in the forenoon. You may understand it is to be argued on that day unless you receive notice to the contrary. It is possible that some other assignment may have been made for that day, but probably not. With that understanding, the hearing will be adjourned until May the 11th at Washington, unless the parties desire to put in some further testimony.

Mr. J. H. Call: The defendants are to have until May the 7th to serve their brief. The argument is May the 11th. Now, we will have to leave here before we have service of that brief, unless the time is shortened.

Mr. Norton: I will serve it in Chicago.
(Discussion.)
1468 Commissioner Prouty: If you make service on Mr. Matthews the 7th in Chicago that will be sufficient.
Mr. Durbrow: I shall make service in Chicago on the same day.
(Discussion.)
Commissioner Prouty: If either party desires to introduce any more testimony you should notify me by the 9th or 10th of April at Washington and I will arrange to give you a day at Chicago the last of the week of April 18th.
Mr. Norton: I do not think of anything, but I shall want to leave it open.
Commissioner Prouty: The hearing will now stand adjourned.

(Whereupon, on the 29th day of March, 1910, the hearing in the above entitled matter was closed.)

1469 Before the Interstate Commerce Commission.

Docket No. 3000.

ARLINGTON HEIGHTS FRUIT EXCHANGE et al., Complainants,
against
SOUTHERN PACIFIC COMPANY et al., Defendants.

CHICAGO, ILLS., *April 22nd*, 1910.

Before Hon. C. A. Prouty, Commissioner.

Met pursuant to notice.

Appearances:

For the Complainants:
Messrs. Mayer, Meyer, Austrian & Platt, by I. H. Mayer, F. E. Matthews, and H. C. Bangs.

For the Southern Pacific Lines:
F. C. Dillard.

For the Atchison, Topeka & Santa Fe Lines:
Mr. T. J. Norton.

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Exhibits.

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1471 The parties met at 10:00 A. M., and were excused until 2:00 P. M., pending the hearing of other cases, at the morning session.

2:00 P. M.

Present: Parties as before.

Commissioner Prouty: You may proceed, Mr. Mayer.

Mr. Norton: I would like to call the Commissioner's attention to one fact. In your letter to me of April 10th you say that "I am this morning in receipt of a letter from Messrs. Mayer, Meyer, Austrian & Platt, stating that they desire to show the facts in reference to the actual movement of this traffic and requested you to produce at the hearing some witness having knowledge of this matter," etc. Everything that was specified in their original letter as wanting from Mr. Nicholson, we have Mr. Peabody prepared on, and he was there with the data on everything that Mr. Nicholson could state.

Commissioner Prouty: My understanding or my recollection, without consulting the correspondence, was that they had de-
1472 sired to show the facts in reference to the movement of this traffic. I thought you stated out there that Mr. Wells was there and would be able to testify to that, but Mr. Wells was taken sick and went away.

Mr. Norton: We intended to put him on ourselves.

Commissioner Prouty: And when Mr. Call made some reference to that the last afternoon of the hearing, it was said Mr. Wells was not there, and could not, therefore, be examined.

Mr. Norton: We had our car accountant there the whole four days, who has a report of every car. I wanted to clear up our record, as to our not producing the witness called for. I intended to call Mr. Wells as our own witness, and not on their account.

Mr. Mayer: Your Honor's recollection of the record is as I under-

stand it. What we want to try to do this afternoon, if we can, and if not this afternoon, to ask your Honor to devise some way so we can show it, is to show the physical movement of these cars by some one who knows, and not by a statistician. However, we will get to that in the course of a few minutes. I understand that as part of the proceedings in California it was understood that the Commission would have some test made itself as to certain matters, and
1473 that there was some discussion as to how the cars we were shipping pre-cooled and pre-iced should be sealed, as to whether we should use our own private seal or let it go through under the railroad's seal. There was some discussion as to whether there would be any likelihood of the railroad breaking those seals, and your Honor made some remark that I thought would be calculated to deter the railroads from undertaking to interfere with the seals, particularly under the circumstances. And I now have here some witnesses from Milwaukee and Buffalo and Chicago, for the purpose of proving that the seals have been tampered with. Mr. English, take the stand.

Commissioner Prouty: What seals have been tempered with?

Mr. Mayer: Seals on cars that left these plants in California, on the Santa Fe, some of them, and some on the Southern Pacific, pre-cooled and pre-iced, and instead of coming in under the original seals, in some instances there were no seals at all, and in others seals of connecting carriers and in others the ice bunkers filled at the last icing station, and other evidence of their having been interfered with.

Commissioner Prouty: Do you refer to shipments made this year?

1474 Mr. Mayer: I refer to shipments made this year, within the last week or ten days, since your Honor left California.

Commissioner Prouty: My suggestion was that those cars should be sealed with the seals of the shippers and that those seals should be examined from station to station by the inspectors who would make these tests. I do not know that it would be profitable at this time to go into that question. The railroads certainly understand and Mr. Norton understands what the desire of the Commission is in that respect.

Mr. Norton: Certainly.

Commissioner Prouty: And we will expect the railroads to carry it out.

Mr. Norton: They will be.

Commissioner Prouty: At any rate, our inspectors begin next Monday to inspect the movement of those cars for the last week of April, and they will certainly know whether those seals go through intact or not.

Mr. Dillard: I would like if Mr. Mayer would make a statement of what he says the trouble is, because I am satisfied if any seals have been broken that ought not to have been broken it must have been in looking after the fruit. I would so take it. I do
1475 not think any carrier would wilfully violate a rule of this Commission on it, but I would like if we would make the statement, if not to go into the record, then outside of the record,

because I want to take it up immediately by wire with the Southern Pacific people and find out what the trouble is.

Commissioner Prouty: The Commission has made no order about it, but a suggestion.

Mr. Dillard: It does not make any difference whether it is in the shape of a formal order or not, but I want the thing that the Commission suggests done in letter and in spirit.

Mr. Norton: You will recall that we stated out there that for a long time after they began to pre-cool and pre-ice, their orders not to open in transit were disregarded, because the tariff had not been changed. But since that, so far as I know, while I believe we have only hauled two of those cars, their orders have been respected.

Mr. Mayer: I have here two inspectors living in Chicago, one living in Milwaukee, and have brought here one or two from Buffalo and one from St. Paul, all of whom will testify to the car numbers, the railroad and to the absence in some instances of any seals and to the presence in some instances of the seals of
1476 the last connecting carrier and to the fact in one particular case where two men were found in the act of breaking the seal here in Chicago, and when asked what for, they said they were inspectors and were under instructions to ascertain the temperature of the car, and they actually went into the car for the purpose of taking it. Now all of those things could not have happened unless instructions had been given—of course not by counsel but by some of the heads of the proper departments of the railroads, to ascertain and break open these seals.

Mr. Dillard: If your Honor please, I repudiate the statement that anybody connected with our road, in violation of an order of this Commission——

Mr. Norton: The Commission's order has not been entered.

Mr. Dillard: I do not care what it was, that they have broken open those seals wrongfully for the purpose of manufacturing or hiding evidence. I do not use the word repudiate in an unkind sense, but want to put it in an absolutely positive sense.

Mr. Mayer: I am stating what the facts are and the witnesses are here ready to testify to them, and can do it in five minutes.

Mr. Norton: Until the tests proposed by the Commission
1477 are being made, do you contend we have no right to inspect the cars?

Mr. Mayer: I contend when our cars are shipped and labelled "Do not break seal; pre-cooled and pre-iced; do not re-ice; see billing,"—I have one of them here—and you are relieved from liability for obeying our instructions, that it is your duty to obey our instructions.

Mr. Norton: I do not know whether we are or not, that is a legal question. But we have a right, I think, in law, to find out what the temperature of the car is and find out what the condition of it is before we turn it over to the Milwaukee Road, for instance.

Mr. Mayer: But you have no right to interfere with our property for the purpose of hurting it——

Mr. Norton: Do you mean to say we will have that car locked

up and that we will be perfectly defenseless in case of damage afterwards because we have not made such inspection?

Mr. Mayer: In the ordinary transportation, when you are called upon to carry that from one terminal to another and not to touch it, I think you are bound to do it.

Mr. Norton: When it comes to the test the Commission is going to make, we will not open the cars, and at other times it is a
1478 question whether we have the right to do it or not.

Mr. Dillard: I understand we are violating the instructions given by the shippers as shown on those cars, but that we do not stand in the position of violating the orders of the Commission, because the test has not been entered upon as yet.

Mr. Mayer: I understand from what took place in California that it was understood that our cars shipped pre-cooled and pre-iced were not to be molested, and you were not to break open the seals.

Commissioner Prouty: I think it was said by Mr. Chambers and all other railroad representatives there that in the future, since the tariff now permits this pre-cooling, the cars would not be disturbed. It seems to me that during the test or at any time, when the car arrives at destination, the railroad certainly should examine the car when it is opened. Perhaps it ought not to open it until the shipper is there, but it should have a right to examine the car at some time, and I express no opinion about their right to examine it at other times; but what the Commission desires now to know is whether a car pre-cooled and pre-iced and sealed will go through from point of origin to destination without injury, and we propose to
1479 make those tests for that purpose, and my understanding was that no cars which were moved under those tests should be touched by the railroad people at all. But that would not necessarily apply to other cars, so far as the Commission is concerned.

Mr. Mayer: I have stated what we can prove——

Commissioner Prouty: We will not encumber this record with any testimony on that subject. It occurs to me that after these tests have all been completed it may be necessary to take some further testimony. We shall not dispose of the icing part of this case until after the tests have been completed, and at that time you can show this fact or any other facts you desire to in reference to the icing or transportation of the cars; but this afternoon we will confine the testimony to the movement of these cars of citrus fruit.

Mr. Norton: I suggest Mr. Mayer might let us have a list of those cars which he alleges have been tampered with.

Commissioner Prouty: Yes, I was about to suggest that he furnish you a list.

Mr. Dillard: You can let us have that later.

Mr. Mayer: Yes, I was about to read it.

Commissioner Prouty: We will not take time now, but let the defendants have a list of the cars you state have been opened.

1480 Mr. Mayer: Have you gentlemen produced here as requested any operating man who knows from personal experience the physical conditions and the manner in which these trains are handled?

Mr. Norton: We produce the Superintendent of Transportation, Mr. Strohn.

C. B. STROHN, was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Mayer: How old are you?
Mr. Strohn: Forty-eight.
Mr. Mayer: Where do you live?
Mr. Strohn: Chicago.
Mr. Mayer: How long have you been connected with the Santa Fe Railroad?
Mr. Strohn: 30 years.
Mr. Mayer: And in different capacities?
Mr. Strohn: Yes, sir.
Mr. Mayer: Been all through the operating departments?
Mr. Strohn: Pretty much, yes, sir.

1481 Mr. MAYER: Are you familiar with the method in which citrus fruit is carried by your road from California points east?
Mr. STROHN: Yes, sir, in a general way.
Mr. MAYER: Have you personal knowledge of the way trains are made up?
Mr. STROHN: Yes, sir.
Mr. MAYER: And the way the cars are loaded?
Mr. STROHN: Yes, sir.
Mr. MAYER: And the way they are hauled through your different divisional points?
Mr. STROHN: Yes, sir.
Mr. NORTON: How much time are we going to be allowed in this hearing?
Commissioner PROUTY: I have today and tomorrow which I can devote to it.
Mr. NORTON: I wish you would finish it today if you can.
Commissioner PROUTY: I think we ought to without any difficulty, but I could be here all day tomorrow if necessary.
Mr. MAYER: I am in hopes and have every expectation, if the witness has knowledge of the things we want to inquire about, that we shall get through very quickly.

1482 Do you know the territory from which this citrus fruit movement originates?
Mr. STROHN: The leading points?
Mr. MAYER: The territory.
Mr. STROHN: Yes, sir.
Mr. MAYER: In which it originates?
Mr. STROHN: Yes, sir.
Mr. MAYER: How wide is that territory?
Mr. STROHN: I cannot tell you just the number of miles.
Mr. MAYER: Approximately will do, Mr. Strohn.
Mr. STROHN: Probably less than 100 miles.

Mr. MAYER: Isn't it less than 60 miles?

Mr. STROHN: It may be; I haven't figured up just the exact distance from one end of it to the other.

Mr. MAYER: It might be less than 50; you would not want to state definitely, would you?

Mr. STROHN: No.

Mr. MAYER: It is in a very limited territory, is it not?

Mr. STROHN: Yes, sir.

Mr. MAYER: Is there any other product that your road hauls in such volumes as you haul citrus fruit which originates in so small a territory, on your main line?

Mr. STROHN: Well, I don't know as I could answer that
1483 exactly. There are some times in the year in our grain producing country——

Mr. MAYER: On your main line?

Mr. STROHN: Yes, sir.

Mr. MAYER: Where the hauls are as heavy?

Mr. STROHN: Yes, sir.

Mr. MAYER: And as constant?

Mr. STROHN: Yes, sir.

Mr. MAYER: What period of the year would that cover?

Mr. STROHN: That would be—what I have in mind is the grain shipping season in Kansas.

Mr. MAYER: And that covers how many months?

Mr. STROHN: It is not the same each year.

Mr. MAYER: How many miles are included in the territory from which those shipments originate?

Mr. STROHN: I cannot say.

Mr. MAYER: But those points are not all on your main line are they?

Mr. STROHN: No, sir.

Mr. MAYER: The citrus movements all originate on your main line?

Mr. STROHN: No.
1484 Mr. MAYER: They do not?

Mr. STROHN: No.

Mr. MAYER: Name one point from which it originates, not on your main line?

Mr. STROHN: Redlands.

Mr. MAYER: How far is Redlands from your main line?

Mr. STROHN: It is on a branch from San Bernardino; I cannot give you the exact mileage.

Mr. MAYER: That is on what is known as the Loop, is it not?

Mr. STROHN: Yes, sir.

Mr. MAYER: Is it more than 20 miles around the entire Loop?

Mr. STROHN: Yes, sir.

Mr. MAYER: How many?

Mr. STROHN: If I had a card here I could tell you, but I cannot tell the actual mileage now.

Mr. MAYER: How many miles do you think it is around that Loop?

Mr. STROHN: I don't care to answer what I think.

Mr. MAYER: Then there is not any other product that your line hauls in any such quantities as this citrus fruit, that originates in as compact a territory as that fruit; is that true or not?

1485 Mr. STROHN: I should say not.

Mr. MAYER: Very well, you have named grain as being the other article——

Mr. STROHN: That is one of them.

Mr. MAYER: Wait a moment. You have also said that it does not originate in as small a territory. If you will be good enough to confine yourself to my questions we will make very quick progress.

Mr. STROHN: Yes, sir.

Mr. MAYER: The grain originates over a vast territory, does it not, extending away hundreds of miles, and connected with your main line by numerous branch lines; is not that true?

Mr. STROHN: Yes sir.

Mr. MAYER: I am directing your attention to any product that is hauled over your line in anything like the quantity or anything like the constancy that citrus fruit is hauled, which originates in anything like so small a territory as the citrus fruit. Have you said all you care to in answer to that question?

Mr. STROHN: No. I would mention coal.

Mr. MAYER: Will you state any territory as compact as the

1486 citrus fruit territory from which originates as much tonnage as citrus fruit?

Mr. STROHN: Well, I cannot say that it originates as much or more, but——

Mr. MAYER: That is what I am asking for.

Mr. STROHN: But in our Southern Kansas coal fields we have a very large tonnage from a small territory.

Mr. MAYER: Are those on your main or branch lines?

Mr. STROHN: On our branch lines.

Mr. MAYER: I am speaking now about your main line and I am trying to have you make a comparison in tonnage, constancy and regularity of movement between any other product and citrus fruit.

Mr. NORTON: Let me suggest that the comparison would be inapropos, because very little of the citrus fruit comes from our main line, it is all on branches comparatively.

Mr. MAYER: That is, you call the Loop a branch?

Mr. NORTON: It is.

Mr. MAYER: Then we understand each other. Is there anything you care to add in answer to the questions I have been putting to you on that subject?

Mr. STROHN: No, sir; I am here to answer your questions.

1487 Mr. MAYER: Then we will go on to the next subject. Will you tell the Commissioner, please, where the cars of citrus fruit are loaded which you carry east from California, from personal knowledge?

Commissioner PROUTY: Well now——

Mr. MAYER: Is that in the record?

Commissioner PROUTY: No, but we cannot assume that any wit-

ness from a personal knowledge, in the sense he has been there and saw it done, can know all that.

Mr. MAYER: Strike out personal knowledge.

Commissioner PROUTY: The witness may state his knowledge.

Mr. NORTON: That has already been covered.

Commissioner PROUTY: I think it has, but he may state in a general way what he knows about it.

Mr. STROHN: Let me have the question again.

(Question read as follows:)

Mr. MAYER: Will you tell the Commissioner please where the cars of citrus fruit are loaded which you carry east from California?

Mr. STROHN: Do you mean at what stations it is loaded?

Mr. MAYER: Yes.

Mr. STROHN: I cannot enumerate all the stations.

Mr. MAYER: Name all those you know of.

1488 Commissioner PROUTY: Generally speaking it originates on the Loop in most part, does it not?

Mr. STROHN: It originates on the Loop and——

Commissioner PROUTY: I think some of the testimony out there showed that some of it originated down towards San Diego.

Mr. STROHN: Yes, sir, and some between San Bernardino and Los Angeles.

Mr. MAYER: That is a few lemons, I think.

Commissioner PROUTY: Yes, and some lemons.

Mr. MAYER: I did not get the last part of your answer.

Mr. STROHN: I said some between San Bernardino and Los Angeles, and some between San Bernardino and Orange.

Mr. MAYER: It originates on the Loop, a large part of it?

Mr. STROHN: A large part of it.

Mr. MAYER: Does not the major part of it originate there?

Mr. STROHN: I could not say.

Mr. MAYER: Is that because you don't know?

Mr. STROHN: I cannot say, I do not count the cars.

Mr. MAYER: Where are those cars assembled that go over your line?

Mr. STROHN: At San Bernardino.

1489 Mr. MAYER: The cars are brought there from the packing points, are they not?

Mr. STROHN: From the loading points.

Mr. MAYER: And when they get to San Bernardino, what is done with them by your company?

Mr. STROHN: They are iced, in case they are to be billed under ice, and they are switched into trains.

Mr. MAYER: And those trains are made up at that point, are they?

Mr. STROHN: Yes, sir.

Mr. MAYER: How many cars of citrus fruit are put into a train?

Mr. STROHN: Well, it depends——

Commissioner PROUTY: Do you refer to the makeup of the train at San Barnardino for shipment east?

Mr. MAYER: Yes.

Commissioner PROUTY: You assume that the cars have been brought into San Barnardino?

Mr. MAYER: I think he has already testified to that, that the cars are filled at the packing points and are assembled at San Barnardino, and made up into trains.

Commissioner PROUTY: The testimony in California showed in a general way how the cars were brough into San Bernardino
1490 and how long it took to bring them in here, but there was no testimony as to the movements from San Bernardino east.

Mr. MAYER: I anticipated a point there, and I would be glad to have your Honor remind me of what took place out there, because I know your knowledge is much better than mine and besides I was not at that hearing. These cars are moved from the packing points to San Bernardino.

Mr. STROHN: Yes, sir.

Mr. MAYER: That is the assembling point?

Mr. STROHN: Yes, sir.

Mr. MAYER: There they are made up by your company into trains; is that correct?

Mr. STROHN: Yes, sir.

Mr. MAYER: They are hauled from there over your line east according to the billing; is that right?

Mr. STROHN: Certainly.

Mr. MAYER: How many of these citrus fruit cars are put into a train at San Bernardino when the movement east begins?

Mr. STROHN: There is no regularity about that.

Mr. MAYER: What does it depend upon?

Mr. STROHN: It depends upon the number of cars that are
1491 loaded and the time they get them at San Bernardino?

Mr. MAYER: Anything else?

Mr. STROHN: I don't know as I could mention anything else.

Mr. MAYER: Have you any regular time for pulling out these trains from San Bernardino?

Mr. STROHN: No, we start them as soon as they can be got ready.

Mr. MAYER: It is not like passenger trains then, they do not start on any schedule time, do they?

Mr. STROHN: We have a schedule of Train 34, that is supposed to handle that fruit.

Mr. MAYER: I am not speaking about any one train, but I am speaking about all the trains. I have in front of me a memorandum which purports to show the movement of a train on your road at 5:50 P. M. on the 31st of December, 1909, another one at 9:40 P. M., and another one at 12:45 P. M.; in other words, is it not a fact that these trains are pulled out of San Bernardino as they are made up?

Mr. STROHN: Yes, sir.

Mr. MAYER: And they do not start on any scheduled hour or time; that is correct, is it not?

Mr. STROHN: They are started as soon as they can be got-
1492 ten ready after the loading has been completed.

Mr. MAYER: Precisely. Now have you any knowledge as

to how many of these citrus fruit cars are made up into trains when they leave San Bernardino for the east?

Mr. STROHN: I stated there was no regularity about it.

Mr. MAYER: Have you any knowledge as to how many are put into those trains?

Mr. NORTON: We have the consists that you asked for.

Mr. MAYER: No, you have not. We asked you for it, but you didn't give us that.

Mr. NORTON: No, you did not. We gave you what you asked for.

Mr. MAYER: I will read the record later.

Mr. NORTON: We will take it up right now. You requested us for certain information and we dug it up for you and sent it to you.

Mr. MAYER: It will appear before we get through that you have not dug up what we asked for but put something into our hands that we did not ask for.

Mr. NORTON: I put into your hands exactly what you did ask for.

Mr. MAYER: We will let the Commissioner pass upon it
1493 when we get to it.

Mr. NORTON: I think we are ready to pass upon it now.

Commissioner PROUTY: What was the last question?

(Question read as follows:)

Mr. MAYER: Have you any knowledge as to how many are put into those trains?

Commissioner PROUTY: I think he may answer that. You said you had furnished a statement showing exactly what the consists of the trains were, but Mr. Mayer says you have not, but it is not material to determine that before the witness answers this question. I agree with you, Mr. Norton, that the most satisfactory way to have it is to look at the records rather than take the recollection of the witness, but he may state generally what his recollection of it is.

Mr. MAYER: And in the meantime I suggest that you hand to the Commissioner a copy of what you gave us and he will tell you in one second whether you handed us a consist or not.

Commissioner PROUTY: Proceed and say whether you have any knowledge of the makeup of the trains at San Bernardino.

Mr. STROHN: Of the makeup of the trains?

Commissioner PROUTY: Yes.

Mr. STROHN: That is how many cars of citrus fruit were
1494 put in each train?

Commissioner Prouty: Yes, how many cars of citrus fruit, whether they consist of citrus fruit altogether or partly of citrus fruit and partly something else, how many cars were in the train?

Mr. Strohn: I stated there was no regularity about that and there was not; some trains contained citrus fruit and other freight, and others do not.

Mr. Mayer: How many do you mean to start out with, how many cars loaded?

Mr. Strohn: We mean to start out with what we call a full train.

Mr. Mayer: What do you call a full train?

Mr. Strohn: I think 1600 tons from San Bernardino.
Mr. Mayer: How many cars would that be?
Mr. Strohn: Well, it depends on the tonnage in the cars.
Mr. Mayer: Well, take in these refrigerator cars, such as are used for the transportation of citrus fruit.
Mr. Strohn: Perhaps 45; I could figure it up pretty close.
Commissioner Prouty: You mean 1600 tons gross?
Mr. Strohn: Yes, sir.
Mr. Mayer: That would make about 45 cars, you say?
1495 Mr. Strohn: Somewhere near there, yes, sir. It takes three engines to haul them out of San Bernardino.
Mr. Mayer: Those three engines are used to haul any train of 45 cars east out of San Bernardino, are they not?
Mr. Strohn: They are used to haul any train of 1600 tons; lighter or heavier freight, the number of cars would differ.
Mr. Mayer: Do you find it more economical to use three engines for that work than you would to diminish the weight of your trains?
Mr. Strohn: Yes, sir.
Mr. Mayer: Have you made tests on that?
Mr. Strohn: Well, I think we have.
Mr. Mayer: You would not do it, I suppose, unless you found it more economical, would you?
Mr. Strohn: No.
Mr. Mayer: You of course mean to operate your road on the most economical principles?
Mr. Strohn: Yes, sir.
Mr. Mayer: Then all freight that goes out east from San Bernardino over your line in similar train loads would be hauled by three engines; is that right?
Mr. Strohn: If there was sufficient tonnage, yes. If there
1496 was not enough for three we would haul it with two.
Mr. Mayer: How far do those engines go?
Mr. Strohn: Two of them are helpers and go about 25 miles, to Summit.
Mr. Mayer: And the other is the regular locomotive that is used to haul the train through to its divisional point; is that right?
Mr. Strohn: Yes, sir, to Barstow.
Mr. Mayer: And those two helpers are used by you for the transportation east of your freight in general from that point, are they not?
Mr. Strohn: Yes, sir.
Mr. Mayer: They are as much part of your equipment as the tracks, are they not?
Mr. Strohn: Yes, sir; we own them.
Mr. Mayer: You have to have them, then, even though you did not transport citrus fruit, is what I mean?
Mr. Strohn: Yes, sir, if we haul other freight.
Mr. Mayer: And you do haul other freight?
Mr. Strohn: Yes.
Mr. Mayer: And in the hauling of the other freight you do use these two helpers?

1497 Mr. Strohn: Yes, sir.

Mr. Mayer: Wherever you have helpers on your entire route it is for the purpose of assisting in the movement of your freight generally, is it not?

Mr. Strohn: Yes, sir.

Mr. Mayer: And it is because you regarded that method of operation cheaper than reducing the tonnage of the trains; is not that so?

Mr. Strohn: Yes, sir.

Mr. Mayer: So that the same facts exist all over your line as at San Bernardino with respect to the use of helpers?

Mr. Strohn: Yes, wherever we have hills and helpers are necessary.

Mr. Mayer: You have been cutting down your grade in the last five or ten years wherever you could do it, have you not?

Mr. Strohn: Yes, sir.

Mr. Mayer: Speaking of your entire line, in a general way.

Mr. Strohn: Yes, sir; we are spending a good deal of money doing that.

Mr. Mayer: And the purpose of that is in order to cheapen the cost of operation, is it not?

1498 Mr. Strohn: Yes, sir.

Mr. Mayer: And you do find that that is the result?

Mr. Strohn: Yes, sir.

Mr. Mayer: So that the cost of operating your road is relatively cheaper today than it was ten years ago, is it not?

Mr. Strohn: Well, it ought to be.

Mr. Mayer: And it is relatively cheaper today than it was five years ago, is it not?

Mr. Strohn: I think it should be, from the amount of money we have spent to improve it.

Mr. Mayer: You have spent a great many millions of dollars, and do every year, for improvements of that character, do you not?

Mr. Strohn: Yes, sir.

Mr. Mayer: Speaking generally now, you have increased the weight of your rails?

Mr. Strohn: Yes, sir.

Mr. Mayer: Why?

Mr. Strohn: To make a better roadbed.

Mr. Mayer: And a better roadbed means cheaper operation?

Mr. Strohn: It means safer operation.

1499 Mr. Mayer: And it means cheaper, too, does it not?

Mr. Strohn: Not materially.

Mr. Mayer: Doesn't it last longer than the lighter weight rail?

Mr. Strohn: Yes, sir.

Mr. Mayer: Doesn't it give a steadier foundation for the cars and the trucks?

Mr. Strohn: Yes, sir.

Mr. Mayer: Doesn't it lengthen the life of the rolling stock?

Mr. Strohn: Well, I suppose it does to a slight degree.

Mr. Mayer: And it renders wrecks less liable, does it not?

Mr. Strohn: Yes, the better road you have, the less wrecks you are supposed to have.

Mr. Mayer: So that that was done to cheapen the cost of operation, was it not?

Mr. Strohn: Yes, sir.

Mr. Mayer: Now take your rolling stock; your freight cars, speaking generally, are heavier now than they were five or ten years ago, are they not?

Mr. Strohn: Yes, sir.

Mr. Mayer: The tractive power of your locomotives is far
1500 in excess now of what it was five years ago, is it not?

Mr. Strohn: Yes, sir; and they cost a great deal more money now.

Mr. Mayer: Sure, as a matter of course. Now, with the increased tractive power of your locomotives, the tension on your freight cars has increased, hasn't it, the strain?

Mr. Strohn: Yes, sir.

Mr. Mayer: The pull?

Mr. Strohn: Yes, sir.

Mr. Mayer: That is, with the increase of the tonnage of your trains, the strain or tension on the cars is increased, is it not?

Mr. Strohn: Yes, sir.

Mr. Mayer: Now then, it is safer and more economical and more satisfactory, is it not, in the operation of your railroad, to have as much tonnage in as safe cars with as powerful locomotives as human skill can devise; is not that a fact?

Mr. Strohn: It is safer operation, you say?

Mr. Mayer: That is what I said, safer and more economical and more satisfactory and a quicker movement?

Mr. Strohn: It may not be quicker, but it is more economical; that is why we build large cars and large engines.

1501 Mr. Mayer: And as the car gets larger it must be heavier, is not that true?

Mr. Strohn: Yes, sir.

Mr. Mayer: Have I correctly stated the reasons for building these freight cars heavier than formerly?

Mr. Strohn: I think you have covered it pretty well.

Mr. Mayer: Can you, with your vast experience, suggest any additional reasons for so doing?

Mr. Strohn: Well, one thing would be to have cars that would last longer. The better they are built the longer they will last, and it is just like building a good house compared with a poor house, the better house you build the longer it will last, the better service it will give you.

Mr. Mayer: Steel frames of course weigh more than wooden frames, in these refrigerator cars, do they not?

Mr. Strohn: Yes, a little.

Mr. Mayer: And you have adopted them on your line, I believe, have you not?

Mr. Strohn: No, sir, we have not.

Mr. Mayer: You have not?

Mr. Strohn: Not in refrigerator cars; no, sir.

Mr. Mayer: What kind of terminal facilities have you at
1502 San Bernardino?

Mr. Strohn: We have very fair facilities there.

Mr. Mayer: Describe them, if you will?

Mr. Strohn: Well, we have a large yard for assembling freight. I can't give you just the——

Mr. Mayer: Have you any expensive structures there? How much of an investment have you there by way of structures?

Mr. Strohn: I could not tell you.

Mr. Mayer: Do you know of any building there outside of sheds?

Mr. Strohn: Yes, sir, we have large car shops, and shops for——

Mr. Mayer: That car shop has not anything to do with the transportation of citrus fruit any more than it has with other merchandise, has it?

Mr. Strohn: You are asking me about the buildings, and——

Mr. Mayer: Yes, I want to find out just what the terminal conditions are there, if you will state them, please.

Mr. Strohn: Well, we have a depot.

Mr. Mayer: Passenger depot?

Mr. Strohn: Yes, sir.

Mr. Mayer: Go on.

1503 Mr. Strohn: Has that anything to do with the handling of citrus fruit?

Mr. Mayer: Go on. I don't think so, no. I would like to have you tell us what terminal facilities or structures you have there in connection with this citrus fruit or other merchandise?

Mr. Strohn: Well, that is different. You asked me what facilities we had there.

Mr. Mayer: Perhaps it is my fault, perhaps my question was a little bit too broad.

Mr. Strohn: We have icing facilities there probably—we are building a pre-cooling plant there.

Mr. Mayer: What else?

Mr. Strohn: Do you mean what else has to do with the handling of the fruit?

Mr. Mayer: With the handling of fruit or other merchandise?

Mr. Strohn: Well, the whole yard and the engines and the employés all have to do with that.

Mr. Mayer: Have you stated everything that is there that has reference to the handling of freight?

Mr. Strohn: All I can think of.

Mr. Mayer: Very well. Now I wish you would follow one
1504 of those trains with me, if you please, from San Bernardino east. You have certain divisional points on your line, have you not?

Mr. Strohn: Yes, sir.

Mr. Mayer: And these train loads—I am speaking now exclusively of citrus fruit or trains composed in part of citrus fruit—move from one terminal point to the other, to that divisional point; am I right?

Mr. Strohn: Yes, sir.

Mr. Mayer: I do not know whether it is going to be too wearisome to call them off by name or not; I should judge there are about 15 to Chicago, your Honor.

Mr. Norton: We are going to introduce that if you do not.

Commissioner Prouty: You may adopt your own course.

Mr. Mayer: I do not want to burden the record unnecessarily. What is the first divisional point reached?

Mr. Strohn: San Bernardino to Barstow.

Mr. Mayer: How many miles?

Mr. Strohn: Well, I will have to look at my record to tell you exactly by miles.

Mr. Mayer: Your best recollection will do, if you have one.

Mr. Strohn: About 140, I believe.

1505 Mr. Mayer: My information is it is about 81 miles.

Mr. Norton: Can he look at those sheets?

Mr. Mayer: No objection at all. I suppose these distances are right?

Mr. Norton: Yes.

Mr. Mayer: Counsel suggests that I lead the witness, and I think the suggestion is a good one. The first divisional point is Barstow, 81 miles from San Bernardino, is it not?

Mr. Strohn: Yes, sir.

Mr. Mayer: Now until this train load reaches Barstow there is nothing you have to do with it so far as transportation is concerned, except to move it; it goes along steadily until it reaches the terminal point, does it not?

Mr. Strohn: Yes, sir.

Commissioner Prouty: Do those three engines acompany it all the way?

Mr. Strohn: No, only part of the way.

Mr. Mayer: I was just going to ask that. It goes all that distance under the power of one locomotive, excepting as it is helped for about 25 miles by the two helpers, is not that right?

Mr. Strohn: Yes, sir.

1506 Mr. Mayer: There is no change in the makeup of the train on that division, is there?

Mr. Strohn: No, not necessarily. The train is supposed to come right through to that division point.

Mr. Mayer: When it gets to Barstow what does your company do? Change crews, don't you?

Mr. Strohn: Yes, sir, the crews and engines.

Mr. Mayer: Crews and engines. What does a crew consist of on the kind of train we are speaking of?

Mr. Strohn: Engineer and firemen and conductor and two brakemen.

Mr. Mayer: When they get to Barstow there is a substitution of five men for the former five men; is that right?

Mr. Strohn: Yes, sir.

Mr. Mayer: Do they add any additional cars to that train at Barstow, if there happen to be any there?

Mr. Strohn: They might add some and might take off some; it would depend a great deal on the size of the train.

Mr. Mayer: They would not take off of that train any car that was routed through, would they?

Mr. Strohn: They might.

Mr. Mayer: For what purpose? I am not speaking of
1507 any exceptional situations, but I am talking about the general way in which this business was conducted. You so understand it, do you?

Mr. Strohn: Yes, sir.

Mr. Mayer: Now proceed.

Mr. Strohn: But cars are often set off or taken off at division points.

Mr. Mayer: Would there be any purpose in taking off a citrus fruit car at a division point?

Mr. Strohn: There might be, to lighten the train.

Mr. Mayer: To lighten the train?

Mr. Strohn: Yes.

Mr. Mayer: Would you start out from San Bernardino with a train composed exclusively of citrus fruit cars that was of such a tonnage that you had to take off some of those cars at any divisional point?

Mr. Strohn: Yes, sir.

Mr. Mayer: Do you know of any such case ever happening?

Mr. Strohn: Yes, sir.

Mr. Mayer: How many such instances do you know of, personally, I mean.

Mr. Strohn: The records will show that trains are often
1508 changed at division terminals. They——

Mr. Mayer: Don't those instances consist of cutting out of a citrus fruit train a car or cars containing other merchandise?

Mr. Strohn: Not necessarily.

Mr. Mayer: But is it likely?

Mr. Strohn: They would be more likely to set out a car of dead freight than they would a car of citrus fruit.

Mr. Mayer: What do you mean by dead freight?

Mr. Strohn: Lumber, or anything like that, or dried fruit.

Mr. Mayer: By setting out, you mean cutting out?

Mr. Strohn: Setting it away from the train.

Mr. Mayer: You mean taking it away from the train?

Mr. Strohn: Taking it away from the train; yes, sir.

Mr. Mayer: Are you willing to testify that it is a common occurrence to set out or take away a citrus car from one of these trains at a divisional point?

Mr. Strohn: Yes, sir.

Mr. Mayer: It is a common occurrence, is it?

Mr. Strohn: Yes, sir.

Mr. Mayer: You think it happens on every train shipment that leaves San Bernardino?

1509 Mr. Strohn: No.

Mr. Mayer: Would it happen as often as it does if your

train movement from San Bernardino were not mixed, that is, did not consist of both citrus fruit cars and other merchandise?

Mr. Strohn: It does not make any difference. Where that is done it is to reduce or increase the tonnage.

Mr. Mayer: That is done for the convenience of the railroad, is it not?

Mr. Strohn: It is done on account of the grades.

Mr. Mayer: That is done for the convenience of the railroad, is it not?

Mr. Strohn: No.

Mr. Mayer: Is it done for the convenience of the shipper?

Mr. Strohn: It is done on account of the grades.

Mr. Mayer: Is it done for the convenience of the shipper?

Mr. Strohn: No.

Mr. Mayer: Precisely. Now then the next divisional point is Needles, 169 miles from Barstow, is it not?

Mr. Strohn: Yes, sir.

Mr. Mayer: Does that mean, in plain English, that that train as it leaves Barstow goes on to Needles without any change
1510 and without any attention other than the transportation or the movement?

Mr. Strohn: Yes, sir; that is the division point; that is a——

Mr. Mayer: Can you tell how many of these divisional points there are between San Bernardino and Chicago?

Mr. Strohn: Yes, sir, I can call them off if you wish.

Mr. Mayer: Just the number of them. There are 18, are there not?

Mr. Strohn: There are 18 counting San Bernardino and Chicago.

Mr. Mayer: And the distances of those between the divisional points, speaking consecutively, run from 81 miles, the lowest, up to 169 miles; the highest; is that correct?

Mr. Strohn: Yes, sir.

Mr. Mayer: At each of these divisional points there is a change of crew, is there not?

Mr. Strohn: Yes, sir.

Mr. Mayer: A substitution of five men?

Mr. Strohn: Yes, sir.

Mr. Mayer: And that is the way that train comes into Chicago, doesn't it?

1511 Mr. Strohn: What is left of it.

Mr. Mayer: What is left of it? Well, they have not cut out or set out any citrus fruit cars from the train as it originally left, have they?

Mr. Strohn: Yes, there is no—we never have a solid train which comes clear through to Chicago.

Mr. Mayer: Are you saying that now from personal knowledge?

Mr. Strohn: Yes, sir.

Mr. Mayer: That there is never shipped a solid train if citrus fruit originating at San Bernardino; you make that statement from your personal knowledge, do you?

Mr. Strohn: From my personal knowledge as far as I am able to find, and I have searched our records. The cause of it is that the

fruit has other destinations than Chicago; at Kansas City, Omaha, Denver, and you seldom get——

Mr. Mayer: I am speaking about east of Chicago.

Mr. Strohn: All right, east of Chicago.

Mr. Mayer: Now what do you say as to the trains leaving San Bernardino for points east of Chicago?

Mr. Strohn: I say the same thing.

Mr. Mayer: You say they never leave in solid trainload lots?

Mr. Strohn: I did not say they left in solid trainload lots.

1512 Mr. Mayer: That is what I asked for.

Mr. Strohn: You asked me if they ran through to Chicago.

Mr. Mayer: Do they ever leave in solid trainload lots?

Mr. Strohn: Yes, sir.

Mr. Mayer: They do?

Mr. Strohn: Yes.

Mr. Mayer: Do you know of such a train reaches Chicago with fewer cars than when it left San Bernardino, or is it customary for that train to come into Chicago with the same number of citrus fruit cars as it started with?

Mr. Strohn: I just said I didn't know that we ever had a train that the same train comes through the whole way.

Mr. Mayer: In its original condition?

Mr. Strohn: Yes, sir.

Mr. Mayer: That is, you mean there will be some cars added to it or taken away, is that right?

Mr. Strohn: Yes, sir, there will be cars set out before they get to Chicago.

Mr. Mayer: Sometimes cars will be set out at a divisional point and other cars put in?

Mr. Strohn: Yes, sir.

Mr. Mayer: And those other cars will contain other mer-

1513 chandise than citrus fruit, will they not?

Mr. Strohn: They might be citrus fruit set out of some previous train.

Mr. Mayer: And they might be other merchandise, is not that so?

Mr. Strohn: Yes, sir.

Mr. Mayer: What kind of freight do you put into these trains to haul citrus fruit?

Mr. Strohn: Anything we have to move east.

Mr. Mayer: Just illustrate, if you will, the different kinds of merchandise you put in cars and attach to these citrus fruit trains?

Mr. Strohn: Carloads of mixed merchandise, dried fruit, nuts, wool, shingles, anything we might have to fill up the train.

Mr. Mayer: Of course, you do not mean you put merchandise of that character into a car that contains citrus fruit, do you?

Mr. Strohn: No, carloads of it.

Mr. Mayer: The citrus fruit is handled by you in carload lots without exception, is it not? I mean from San Bernardino east.

Mr. Strohn: Yes, sir.

1514 Mr. Mayer: Then it is a common thing, as I understand your testimony, for a train coming from San Bernardino east, to and through Chicago, to haul not only citrus fruit cars but cars containing any number of other different kinds of merchandise?

Mr. Strohn: Yes, sir.

Mr. Mayer: What is it that influences your company in the selection of the other articles that shall go into cars to be attached to the citrus fruit trains?

Mr. Strohn: Nothing that influences us.

Mr. Mayer: Nothing at all, it is done indiscriminately, is it not, according to the freight you have to move?

Mr. Strohn: Yes, sir.

Mr. Mayer: Do you know how fast that train moves between San Bernardino and Barstow? I am speaking of the train loaded with citrus fruit cars?

Mr. Strohn: The number of miles per hour?

Mr. Mayer: Yes, sir.

Mr. Strohn: Well, this statement shows——

Mr. Mayer: No, do you know without looking at the statement, first?

Mr. Strohn: No.

1515 Mr. Mayer: You haven't any personal knowledge?

Mr. Strohn: No, sir.

Mr. Mayer: We can all look at the statement.

Mr. Strohn: It is necessary to look at the time card in order to find the speed of the train.

Mr. Mayer: That is all you would know about it?

Mr. Strohn: Yes, sir; I cannot carry all of that in my head.

Mr. Mayer: I am talking about what you do know; I am not finding fault with you for not knowing. We can all read these figures, you know. Do you know how long it actually takes for the movement from California to Chicago? Do you know anything about that of your own personal knowledge?

Mr. Strohn: Yes, sir.

Mr. Mayer: But you cannot tell what the time is between any two divisional points, can you?

Mr. Strohn: I can tell from the figures, yes, sir; but——

Mr. Mayer: I mean of your own knowledge.

Mr. Strohn: No, I cannot carry it in my head for 10,000 miles of railroad.

Mr. Mayer: Well, I thought perhaps you could.

Mr. Strohn: I can give you the time from San Bernardino

1516 to Chicago if you wish it.

Mr. Mayer: Do you mean by figuring it up?

Mr. Strohn: No, by our scheduled time.

Mr. Mayer: Have you got one of your schedule sheets here?

Mr. Strohn: No, I have not, but I have the figures, though.

Mr. Mayer: I would rather see the sheet or your printed schedules.

Commissioner Prouty: Have you a scheduled train from San Bernardino to Chicago?

Mr. Strohn: Yes, sir.

Mr. Norton: We will get the time card and put it in.

Mr. Mayer: Have you one here?

Mr. Peabody: We will have one here if you want it.

Mr. Mayer: If you will, send for one, please. What is the distance on your line from San Bernardino to Chicago?

Mr. Strohn: I think it is 2175 miles.

Mr. Mayer: What different classes of freight are handled on your line from San Bernardino east the same as this citrus fruit, on what is called the Red Ball service?

Mr. Strohn: Well, merchandise, as I stated before; nuts, and wool and dried fruit.

Mr. Mayer: Will you enumerate all the things you can
1517 think of?

Mr. Strohn: Well, I would have to enumerate everything that people have to ship.

Mr. Mayer: What is the Red Ball service?

Mr. Strohn: It is expedited service.

Mr. Mayer: By expedited service you mean, I suppose, that it is the speed at which the through freight moves over your line, don't you?

Mr. Strohn: Well, only the high class freight.

Mr. Mayer: And all the high class freight moves at the same speed and has the same so-called expedited service, has it not?

Mr. Strohn: Yes, all high class freight has.

Commissioner Prouty: Would you call this an expedited service in the same sense you call the movement of live stock an expedited service?

Mr. Strohn: Well, we consider Train 34 a fast trans-continental train; it is a fast freight train.

Mr. Mayer: It is a common thing, is it not, to haul empty cars east with these train loads?

Mr. Strohn: Not very common; no, sir. Empties are sometimes put on to use as fillers.

1518 Mr. Mayer: What do you mean by a filler?

Mr. Strohn: We might have 10 cars of citrus fruit to start from San Bernardino, and we would have to start a train with it and we would fill that train up with other high class freight, if we had it; and if we still didn't have the tonnage, we might put on some empties if we had them to go east.

Mr. Mayer: That is to say, you want the train to have as many cars as the engines can haul safely and economically?

Mr. Strohn: As nearly as possible.

Mr. Mayer: That is so as to get the full benefit of the wages paid the crew and the cost of operation including the fuel and everything that goes to make up cost of operation?

Mr. Strohn: Yes, sir.

Mr. Mayer: Of course that is done because it is considered most economical, is it not?

Mr. Strohn: Yes, sir.

Mr. Mayer: So it is a common thing, is it not, to haul on this Red Ball or so-called expedited service, a good many empty cars?

Mr. Strohn: I said not very many.

Mr. Mayer: Now your company has handed us a statement, a copy of which you have in front of you, and you will notice on
1519 the first line—and by the way, that statement purports to be a recapitulation of train consist on through trains on main line between San Bernardino and Chicago for the first seven days in March, 1910, does it not?

Mr. Strohn: Yes, sir.

Mr. Mayer: I draw your attention to the first line. That shows the first division point between Los Angeles and Barstow, doesn't it?

Mr. Strohn: Yes, sir,—no, Barstow and San Bernardino.

Mr. Mayer: I beg your pardon, you are right, San Bernardino and Barstow. That shows under the second line citrus trains, does it not?

Mr. Strohn: Yes, sir; that means trains that carry citrus fruit, whether one car or twenty.

Mr. Mayer: Now, as a matter of fact, from the next column it would look as if there were 17 trains of that kind that passed through that divisional point, does it not?

Mr. Strohn: Yes, sir, during that week.

Mr. Mayer: Can you tell as an expert railroad man from anything that appears on that paper, just how many citrus cars were in each of those 17 citrus trains?

Mr. Strohn: The statement shows there were 583 in——

1520 Mr. Mayer: Just say yes or no to my question, if you please. If you don't understand the question I will try to make it clear, if possible. Read the question.

(Question read.)

Mr. Strohn: I can tell you what the average was and the total——

Mr. Mayer: I am not asking you about the average. Will you kindly answer my question.

Mr. Strohn: Do you mean how many were in the first train, how many were in the second, and how many were in the third?

Mr. Mayer: Yes, how many were in each?

Mr. Strohn: I can't tell you.

Mr. Mayer: Then as a matter of fact, so far as appears from that paper, there might have been 60 citrus cars in one train, 55 in another, and 49 in another, and so forth and so on, and perhaps some of them having two or three or one citrus car—you cannot tell anything about that from that paper, can you?

Mr. Strohn: No, sir, but we have——

Mr. Mayer: You have answered the question.

Mr. Norton: To save time, this purports to be a recapitulation and a synopsis, and the data from which this is drawn is all in Mr. Peabody's possession and was here this morning.

1521 Mr. Mayer: Give me the record, page fourteen—1373-4.

Mr. Matthews: Commissioner Prouty stated "Could you not take the first week in March or the last week, and give us the

number of cars in each train containing oranges which moved out of a divisional point for that week?" Then on the next page Mr. Peabody stated, "All right, sir. An abstract of the trains out of each divisional point, showing the consist of every train which contains oranges, showing the number of cars in the trains, number of cars of oranges and number of empty cars."

Mr. Norton: We have got that and had it here this morning.

Mr. Mayer: You say you had it here this morning?

Mr. Norton: Yes.

Mr. Mayer: The actual consist?

Mr. Norton: Just what Commissioner Prouty asked us to get up.

Mr. Mayer: Is what you call the actual consist a copy of the paper you sent us this morning?

Mr. Norton: No, you had not asked for it.

Mr. Mayer: Will you let us see it?

Mr. Norton: Certainly. This morning we got a note signed by Mr. Matthews saying "We would appreciate it if you would
1522 let the bearer have a synopsis of the train sheets which Mr. Peabody has been preparing," and it was a question up between Mr. Peabody and me whether we were to send the whole plunder over in response to that note or just what it called for.

Mr. Mayer: Then you sent this, and we immediately notified you it was not what the Commissioner asked you to send us.

Mr. Norton: Then we got this letter sent over by special messenger: "It was understood you were to furnish us with a statement showing the consist of every separate train carrying citrus fruit over each division point between California and Chicago for one week." Instead of doing that you have this morning sent us what purports to be a statement showing only the average number of cars in each train and the average consist. This is not what we are entitled to and we therefore request you to have present at the hearing this afternoon the original train sheets and all other memoranda showing the information which is called for, and from which the paper submitted by you was prepared. We also wish you would have present the person who actually prepared the paper and also Mr. Peabody."

We have Mr. Peabody and the consist and we sent in answer to the first request the detail of that sheet. You might have
1523 had it if you had been present this morning and might have had it this afternoon if you were not looking for a row.

Mr. Mayer: I asked for the exact detailed information.

Mr. Norton: No, you did not. You asked for it, based on the correspondence read, and there is what you asked for and you are getting now what you asked for.

Commissioner Prouty: Well, let us proceed, gentlemen. Have you any further questions?

Mr. Mayer: I think you said your equipment was such that you could start out with about 45 cars of this citrus fruit loaded, of course, from San Bernardino and take it to Barstow in one train; is that right?

Mr. Strohn: Yes, sir, with enough engines.

Mr. Mayer: By enough engines you mean, as you have already explained, with one locomotive and two helpers?

Mr. Strohn: Yes, sir.

Mr. Mayer: The helpers going part of the way?

Mr. Strohn: Yes, sir.

Mr. Mayer. Let us take the next divisional point, Barstow to Needles; can you haul more or less in a train load between those two points than between the preceding two points?

Mr. Strohn: We can haul less with one engine.

1524 Mr. Mayer: Do you have any helpers between those two points?

Mr. Strohn: No.

Mr. Mayer: Why not?

Mr. Strohn: Because the grade is not heavy enough.

Mr. Mayer: Do you know how much you can haul between those two points? Now don't guess. If you don't know I will go on to something else. If you do know, I would like to know it.

Mr. Strohn: We have different classes of engines; we haul different tonnage with different engines; the larger the engine the larger the tonnage. Now I cannot tell you——

Mr. Mayer: Certainly. Have you engines in operation between Barstow and Needles which will haul as much as 1600 tons, or 45 cars of fruit?

Mr. Strohn: 1600 tons?

Mr. Mayer: Yes, that is what you said before, is it not?

Mr. Strohn: Yes, sir.

Mr. Mayer: Have you engines of such tractive power as will haul that same train?

Mr. Strohn: No, I think our tonnage schedule is a little less in there.

Mr. Mayer: Do you know what it is?

1525 Mr. Strohn: I can give you the exact figures, if you wish it. I haven't got it here.

Mr. Mayer: Take the next two points, between Needles and Seligman, can you haul just as much between those two points as between the other two points?

Mr. Strohn: No, we cannot.

Mr. Mayer: I suppose as you go along away from your starting place farther and farther, two or three or four or five or six hundred miles, you have to throw off cars all the time in order to lighten the load. Is that what you wish us to understand?

Mr. Strohn: No, but——

Mr. Mayer: What is it? Take a short cut and tell the Commissioner what the truth and facts are.

Mr. Strohn: The fact is that the grade on each division is different.

Mr. Mayer: I am not asking about that. Where the grade is such as to require greater tractive power you either use a larger engine or a helper?

Mr. Strohn: No.

Mr. Mayer: Do you cut up the trains?

Mr. Strohn: Yes, sir.

1526 Mr. Mayer: At how many points do you cut up the trains?

Mr. Strohn: I named Barstow for one.

Mr. Mayer: I didn't understand you cut up trains there. To what extent do you reduce them there?

Mr. Strohn: I told you we added or cut off cars, just as we saw fit.

Mr. Mayer: Do you know to what extent that is done at any one of these divisional points?

Mr. Strohn: No, I cannot say just——

Mr. Mayer: As a matter of fact do you know anything about the weight that your engines do haul between these different terminal points?

Mr. Strohn: Yes, sir, I can tell you what every engine that the Santa Fe owns can haul between any points you wish.

Mr. Mayer: You mean if you look at your records?

Mr. Strohn: Yes, sir.

Mr. Mayer: I am not talking about any such——

Mr. Strohn: You must understand they have a thousand engines and ten thousand miles of railroad, and I cannot remember all this stuff.

Mr. Mayer: Certainly, but can you now tell this Commission the maximum load that can be hauled between any two of these

1527 divisional points with such engines as you use in the service between these points?

Mr. Strohn: I can, if I refer to my records.

Mr. Mayer: Now when you ship this citrus fruit east through Chicago to points beyond, do you take it into the City of Chicago at all?

Mr. Strohn: We take it into our outside yard, if it is billed through.

Mr. Mayer: Is it not a fact you take it to the Indiana Harbor Belt and no nearer Chicago than that? Isn't that the truth?

Mr. Strohn: No, sir.

Mr. Mayer: Where do you say you take it?

Mr. Strohn: To our Corwith yard.

Mr. Mayer: Which yard?

Mr. Strohn: Corwith.

Mr. Mayer: Where is that?

Mr. Strohn: About five miles out.

Mr. Mayer: I am speaking now of shipments not intended for Chicago, but points east of Chicago.

Mr. Strohn: If they are routed by Chicago they come into Chicago.

1528 Mr. Mayer: I am not asking whether they are routed by Chicago or not. Take a shipment of citrus fruit from Chicago to New York, does it pass through Chicago?

Mr. Strohn: Yes, sir, it goes from Chicago.

Mr. Mayer: Would it go within five miles of your yards, as you have just stated, the Corwith yards?

Mr. Strohn: If it goes from Chicago to New York it would.

Mr. Mayer: I didn't say if it went from Chicago to New York.

Mr. Strohn: Yes, you did. You said from Chicago to New York.

Mr. Mayer: Don't quarrel with me. I am talking about a shipment which a man starts from San Bernardino and which he wants in the City of New York.

Mr. Strohn: He may send it by Kansas City and may want it by McCook, or Indiana Harbor.

Mr. Mayer: Suppose he doesn't route it at all, do you route it the cheapest way?

Mr. Strohn: I don't. I couldn't say.

Mr. Mayer: Do you think you would not route it the cheapest way?

Mr. Strohn: So we would——

1529 Mr. Mayer: You just said you could not say.

Mr. Strohn: Well, I can't say.

Mr. Mayer: When you get a shipment of citrus fruit going east of Chicago with no request that you pass it through Chicago, is it not a fact that it would be taken to the Indiana Harbor Belt and that it does not come through Chicago?

Mr. Strohn: How is it routed?

Mr. Mayer: Not routed at all by the shipper.

Mr. Strohn: We might send it east by Streeter or Joilet.

Mr. Mayer: I am not asking what you might do, but what you ordinarily do. You said you are Superintendent of Transportation of this line, I believe.

Mr. Strohn: I do not route the freight.

Mr. Mayer: Don't you know anything about the movement of the freight?

Mr. Strohn: Yes, sir.

Mr. Mayer: Don't you know what the custom is?

Mr. Strohn: The custom is for the shipper to route it.

Mr. Mayer: Oh, where the shipper does not route it.

Mr. Strohn: He does route it.

Mr. Mayer: Where the shipper does not route it.

Mr. Strohn: He does route it.

1530 Mr. Mayer: Suppose the shipper does not ruote it, what would you do, send it right through the heart of the City of Chicago?

Mr. Strohn: I don't claim that. I said we send it through our outside yard.

Mr. Mayer: Wouldn't it be cheaper for you to send it east over the Indiana Harbor Belt?

Mr. Strohn: No.

Mr. Mayer: It would not?

Mr. Strohn: No, sir.

Mr. Mayer: Then as a matter of fact you do not use the Indiana Harbor Belt at all to connect with the eastern roads.

Mr. Strohn: We do when——

Mr. Mayer: When and why?

Mr. Strohn: With all freight that is routed that way, when routed by McCook, and that is a station outside of Chicago on our road.

Mr. Mayer: What has McCook got to do with it?

Mr. Strohn: It is the junction point with the Indiana Harbor.

Mr. Mayer: You mean the agent at McCook will decide whether it is to go through the Corwith yard or via the Indiana Har-
1531 bor Belt Line?

Mr. Strohn: No. When the shipment is routed Santa Fe, Indiana Harbor Belt and Michigan Central East, it is set out at McCook. Now if it might be routed Santa Fe, Michigan Central in Chicago, it would come into Chicago.

Mr. Mayer: Have you any knowledge how those eastern shipments usually are made, or do you know anything about it?

Mr. Strohn: Yes, sir, I have some knowledge about it.

Mr. Mayer: How are they generally made when destined east of Chicago?

Mr. Strohn: They are sent all kinds of routes.

Mr. Mayer: There is not any custom at all about it then, is there?

Mr. Strohn: They route it in different ways.

Mr. Mayer: Who do you mean by they?

Mr. Strohn: The shippers.

Mr. Mayer: I say when the shippers do not route them and do not say anything about Indiana Harbor Belt, but simply want to get their stuff on to New York from San Bernardino.

Mr. Strohn: Well, I must say I never saw a car that was not routed by the shipper, so I don't know now how it would be.

1532 Mr. Mayer: Your counsel has just handed me, pursuant to the colloquy which took place awhile ago——

Mr. Norton: No, pursuant to the request of the Commissioner.

Mr. Mayer: And pursuant to that request also, I hope, what is entitled a consist of through trains on main line, San Bernardino to Chicago, first seven days in March, 1910.

Mr. Norton: One is eastbound and the other is westbound.

Mr. Mayer: The eastbound is all I want at present. I will hand you a copy of it. Look at the first sheet. Have you it before you?

Mr. Strohn: Yes, sir.

Mr. Mayer: That purports to be a consist of the Los Angeles Division between San Bernardino and Barstow, eastbound, does it not?

Mr. Strohn: Yes, sir.

Mr. Mayer: On your road?

Mr. Strohn: Yes, sir.

Mr. Mayer: Don't you find that on the fifth day of March, 1910, Train No. 34 passed over that division containing 62 cars of which 42 were loaded with citrus fruit, 19 with other freight, and one was an empty car.

Mr. Strohn: Yes, sir.

1533 Mr. Norton: That being a caboose.

Mr. Mayer: By the way, in counting the number of cars in a train, do you count the caboose?

Mr. Strohn: Yes, we count it as an empty car.

Mr. Mayer: That is always counted in the number of cars making up a train, is it?

Mr. Strohn: Yes, sir. This train you refer to had 61 cars of freight and an empty caboose, or a caboose.

Mr. Mayer: On the following day you find, do you not, that you hauled a train, No. 34, containing 56 cars, all citrus?

Mr. Strohn: Yes, sir.

Mr. Mayer: Do you want to correct your testimony——

Commissioner Prouty: Is not this over your first division, from San Bernardino to Barstow?

Mr. Mayer: This is over the first division. Do you now want to correct the testimony you gave a little while ago, in which you said you knew of no full trainloads of citrus fruit having left San Bernardino?

Mr. Strohn: I didn't say that.

Mr. Mayer: What did you say on that subject?

Mr. Strohn: I said no trains ever came through to Chicago without having set off cars or picking up cars, solid trains.

1534 Mr. Mayer: Have you any information here by which you can tell the history of any particular train starting from San Bernardino until it gets to Chicago, showing its consist?

Mr. Strohn: No, sir, this is only for seven days and——

Mr. Mayer: And that does not purport to follow a train through, does it?

Mr. Strohn: It shows every train which moved.

Mr. Mayer: Does it purport to show the movement of any particular train from its initial point until it reached Chicago, yes or no, please.

Mr. Strohn: We could not do that without showing the car numbers and following the car numbers through.

Mr. Norton: What is the question?

Mr. Mayer: Will you answer my question?

(Question repeated.)

Mr. Norton: Save time by saying you cannot follow a train.

Mr. Strohn: No, we cannot follow a train.

Mr. Mayer: It is funny this Superintendent didn't know it. So I may not labor under a misapprehension——

Commissioner Prouty: What do you mean by saying you cannot follow a train, Mr. Norton? You are not asked to, so you would not be under any obligation to do it, but why couldn't you

1535 do it?

Mr. Norton: As this record will show and as I will show by the examination of Mr. Peabody, the trains are all torn up before they get to Chicago, and at every junction point they are taken out and put in and the trains are made heavier or lighter, and they are swapped and switched about and the identity of the train cannot be maintained.

Mr. Mayer: Does not the train preserve the same number from the time it leaves San Bernardino until it arrives at Chicago?

Mr. Norton: Yes.

Mr. Mayer: Then if you have the consist of Train 34 when it leaves San Bernardino, you know the number of every car that is in it at that time and its contents, do you not?

Mr. Norton: Yes.

Mr. Mayer: And then when it comes to Chicago you know the number of every car that is in Train 34, and the consist thereof?

Mr. Norton: Yes, and there might not be one of the original cars in it when it got to Chicago.

Mr. Mayer: It depends entirely how it is handled.

Commissioner Prouty: You can show how that is, but my general thought about the movement of this traffic has been that you
1536 would start with the train at San Bernardino and would add to and subtract from that train all the way through, but there would be no general breaking up of the train until you got to Kansas City.

Mr. Mayer: Is the Commissioner's understanding of the situation as just stated by him correct, as you understand it?

Mr. Strohn: There may be some of the cars in that train that——

Mr. Mayer: Speaking generally, you heard the question. Did the Commissioner correctly describe the situation as you understand it?

Mr. Strohn: Yes, if there are a certain number of cars in that train for Chicago it is very likely they would be kept together as far as possible.

Commissioner Prouty: Take your trains for the east; you would haul all those cars to Kansas City, would you not?

Mr. Strohn: Yes, sir.

Commissioner Prouty: All trains intended for points east of the Missouri River, and north of the Ohio any how, would be taken to Kansas City?

Mr. Strohn: Yes.

1537 Commissioner Prouty: And would you not in the handling of a train, therefore, from San Bernardino to Kansas City handle substantially the same cars all the way through? Suppose you started with 20 citrus fruit cars from San Bernardino.

Mr. Strohn: Yes, sir.

Commissioner Prouty: The chances are most of those cars would be destined for some point reached through Kansas City?

Mr. Strohn: Yes, sir.

Commissioner Prouty: Would you not keep those twenty cars all together in that train until you reached Kansas City?

Mr. Strohn: Yes, sir, I think we would, unless something happened to some of them, that they would happen to be set out; because we can handle 20 cars over any division that we have.

Commissioner Prouty: Yes, that is what I thought.

Mr. Strohn: But we cannot handle 36 over any division.

Commissioner Prouty: No, if you started with 36, you would have to set off some of them.

Mr. Strohn: Yes, sir.

Mr. Norton: Might it not happen that 20 of those cars would be set off and pulled over to Glorietta Mountains, for example?

1538 Mr. Strohn: Yes, sir.

Commissioner Prouty: Do you handle your cars that way?

Mr. Strohn: Often.

Mr. Norton: Yes.

Commissioner Prouty: If they are going to Denver?
Mr. Norton: Yes.
Commissioner Prouty: Do you handle them that way if they are going to Kansas City?
Mr. Norton: No, they are handled by the cut-off.
Mr. Mayer: What is that cut-off?
Mr. Strohn: It is called the Belen cut-off, from Belen.
Mr. Mayer: What is it in plain English?
Mr. Strohn: A low grade line.
Mr. Mayer: What was it before?
Mr. Strohn: It was prairie.
Mr. Mayer: Why was the cut-off built?
Mr. Strohn: In order to have a low grade line.
Mr. Mayer: And you wanted a low grade line because the cost of transportation was so much less?
Mr. Strohn: Yes, sir.
Mr. Mayer: That is one of the improvements?
Mr. Strohn: It cost a great deal of money, however.
1539 Mr. Mayer: Certainly, I am aware of it. The citrus fruit all goes that way, doesn't it, when shipped east?
Mr. Strohn: If destined to east of Newton, Kansas.
Mr. Mayer: Can you tell me in a word or two what your duties are as Superintendent of Transportation?
Mr. Strohn: I have charge of the distribution of cars and engines and the movement of the trains.
Mr. Mayer: You are of course familiar with your entire road, are you not?
Mr. Strohn: Yes, sir, more or less.
Mr. Mayer: Will you tell me some of the most important improvements that were made by your road in, say, the last five years; and by your road I am speaking about the route that is taken by this citrus fruit shipped east on the main line?
Mr. Strohn: What kind of improvements?
Mr. Mayer: Speaking generally, physical or otherwise.
Mr. Strohn: Well, we have built considerable double track in Illinois and Missouri and Kansas.
Mr. Mayer: You are speaking about your main line, are you?
Mr. Strohn: Yes, sir.
Mr. Mayer: Why did you do that?
1540 Mr. Strohn: To facilitate the handling of our business.
Mr. Mayer: In other words, your tonnage had increased to that extent that in order to economically, properly and profitably handle it, you had to double track, is that it?
Mr. Strohn: We double tracked to handle it more economically, yes, sir.
Mr. Mayer: And the reason for double tracking it was the increase in tonnage, wasn't it?
Mr. Strohn: Yes, sir.
Mr. Mayer: Proceed, and tell me some more of the principal improvements that your road has made along its main line in the last five years.
Mr. Strohn: Well, we have cut down grades in a number of

places and built this cut-off, and we are now spending a good deal of money cutting down grades and building double track all along our line.

Mr. Mayer: All that is because of your increased tonnage and to enable you to operate your road more economically, is it not?

Mr. Strong: It might not be on account of increased tonnage but it is being done to enable us to operate more economically.

1541 Mr. Mayer: It has that effect too, in your opinion, hasn't it?

Mr. Strohn: It should have, yes, sir.

Mr. Mayer: Are there any other principal items of economy that you can think of?

Mr. Strohn: No, unless it would be in the purchase of larger and heavier power.

Mr. Mayer: Drawing your attention again just for a moment, if you will, to this consist, you will find right on the first day there was a train pulled out of San Bernardino with 40 citrus cars, 5 cars filled with other freight, and 15 empties, making a total of 60?

Mr. Strohn: Yes, sir.

Mr. Mayer: On the next day we find one started with 45 filled with citrus fruit, 6 with other freight, and one empty, making a total of 52; is not that a fact?

Mr. Strohn: Yes, sir.

Mr. Mayer: The next two trains that pulled out contained 61 and 45 cars respectively, did they not?

Mr. Strohn: Yes, sir.

Mr. Mayer: And one of those had 40 citrus cars and 20 filled with other freight, is not that right?

1542 Mr. Strohn: Yes, sir.

Mr. Mayer: On the same day, the 3rd of March, one pulled out with 47 cars of which 35 were filed with citrus fruit and 10 with other freight and 2 empty, is that right?

Mr. Strohn: Yes, sir.

Mr. Mayer: That is a fair example of the way these trains pull out from San Bernardino and operate between that place and Barstow.

Mr. Norton: Read the line just before the last one.

Mr. Mayer: It will speak for itself.

Mr. Norton: I don't think you read fair samples.

Mr. Mayer: Very well, which one do you want me to read?

Mr. Norton: The one just before the last you read.

Mr. Mayer: I am asked to draw your attention to that particular one. That seems to be one which started out with no citrus fruit at all, but with 36 cars, of which 13 were filled with other freight and 23 were empties. Am I giving it correctly?

Mr. Strohn: 13 loads and 23 empties; yes, sir.

Mr. Mayer: But on the same day you pulled out trains containing 26 cars filled with citrus fruit, 17 with other freight, and 5 empties, making a total of 48 in one train; is not that

1543 true?

Mr. Strohn: Yes, sir.

Mr. Mayer: Not it is a fact, is it not, that trainloads of citrus fruit pulled out every day of that week, is not that so?

Mr. Strohn: Yes, sir. There were only eight cars, however, on the 7th.

Mr. Mayer: There were only eight cars on the 7th?

Mr. Strohn: Very likely Sunday.

Mr. Mayer: You say very likely it was Sunday?

Mr. Strohn: Yes.

Mr. Mayer: Why do you think that, from the small number of citrus cars that went out that day?

Mr. Strohn: Yes, the small number loaded.

Mr. Mayer: They do load on Sunday then, do they?

Mr. Strohn: They might load a few cars or might have a few cars left over that were not ready when they picked up Saturday night.

Mr. Mayer: Will you be good enough—I am told, I don't know much about it, but probably it is more likely to be Monday—Monday is the light shipping day, is it not?

Mr. Norton: The 7th of March was Monday.

1544 Mr. Mayer: Will you be good enough to take the consist of the next division, that is between Barstow and Needles. I think you have already testified that they cannot carry as big a train between those two points as in the first division, did you not?

Mr. Strohn: Yes, sir.

Mr. Mayer: Let us see how your consist shows up on that. On the 1st of March there was a train of 39 cars, of which 37 were citrus fruit; is that correct?

Mr. Strohn: Yes, sir.

Mr. Mayer: On the next day there was a train containing among others 36 cars of citrus fruit; is that correct?

Mr. Strohn: Yes, sir.

Mr. Mayer: And there were 41 cars in that train; is that right?

Mr. Strohn: Yes, sir.

Mr. Mayer: On the same day you moved two trains of 48 cars each, did you not?

Mr. Strohn: Yes, sir.

Mr. Mayer: And on the day before you moved a train of 48 cars, did you not?

Mr. Strohn: Yes, sir.

1545 Mr. Mayer: Let us take March 3rd——

Mr. Strohn: A large majority of those were empties, though.

Mr. Mayer: Yes, quite a number of those were empties. Now on the 3rd you had two trains moved, one of which contained 23 cars filled with citrus fruit and 15 with other freight and 7 empties, or a total of 45; is that right?

Mr. Strohn: Yes, sir.

Mr. Mayer: On the same day you moved a train between those points consisting of 30 cars filled with citrus fruit, 8 with other freight, and 3 empties, or a total of 41; is that right?

Mr. Strohn: Yes, sir.

Mr. Mayer: Look at March 6th. I do not want to take up too

many of these items. Don't you find a train of 41 cars on that division consisting of 39 filled with citrus fruit and 2 with other freight?

Mr. Strohn: Yes, sir.

Mr. Mayer: And on the same day there was another train between the same division points containing 42 cars, of which 41 were filled with citrus fruit and 1 was empty; is not that right?

Mr. Strohn: Yes, sir.

1546 Mr. *Strohn:* Can you tell us how many miles out of the 2165 between San Bernardino and Chicago, helpers are required?

Mr. Strohn: No, I cannot.

Mr. Mayer: As a matter of fact is it not less than 100 miles of that entire distance?

Commissioner Prouty: Can you take these different divisions and indicate the divisions on which helpers are used in the handling of these citrus fruit trains?

Mr. Strohn: Yes, sir, I think I can.

Mr. Mayer: I am told by Mr. Matthews that that information will appear on this consist, in which event——

Commissioner Prouty: It will only take him a minute to go through this list and indicate the divisions on which helpers are used in handling these citrus fruit trains.

Mr. Norton: The consist also shows it in detail.

Mr. Dillard: If your Honor will pardon me, Mr. Peabody made it up and he really could testify to it better.

Mr. Mayer: This man ought to know.

Mr. Norton: He knows.

Mr. Dillard: It would save time though, I thought, if Mr. Peabody stated it, as he prepared the statements.

1547 Commissioner Prouty: Just refer to these divisional points and beginning at San Bernardino, you say a helper is used, and you have given the number of miles. Take the next one; is a helper used there, from Barstow to Needles, 169 miles?

Mr. Strohn: No, a helper is not used, but we sometimes use two engines on a train, though.

Commissioner Prouty: What is your distinction between two engines on a train and a helper?

Mr. Strohn: Well, a helper is used for a short distance up a very heavy grade——

Commissioner Prouty: I am assuming now——

Mr. Strohn: It is lighter, it helps the train up.

Commissioner Prouty: I am referring now to the average train and are assuming you are using one of your standard engines. Would a helper or two engines be used in handling that train between Barstow and Needles?

Mr. Strohn: No, it would not.

Commissioner Prouty: Take the next division, Needles to Seligman.

Mr. Strohn: We use some helpers there.

Commissioner Prouty: How many miles?

Mr. Strohn: Well, we have some 95 foot grade there; I
1548 cannot tell you just how many miles it is.

Commissioner Prouty: The next one, Seligman to Winslow?

Mr. Strohn: The same thing there, we have a 95 foot grade.

Commissioner Prouty: Do you know how many miles they are used?

Mr. Strohn: No, I could not tell you how many.

Commissioner Prouty: Winslow to Gallup, 128 miles.

Mr. Strohn: We don't use any.

Commissioner Prouty: Gallup to Belen?

Mr. Strohn: We don't use helpers there.

Commissioner Prouty: Belen to Vaughn?

Mr. Strohn: We use helpers there from Belen to Mountain Air, about 25 miles.

Commissioner Prouty: Vaughn to Clovis?

Mr. Strohn: No, sir.

Commissioner Prouty: Clovis to Amarillo?

Mr. Strohn: No.

Commissioner Prouty: Amarillo to Canadian?

Mr. Strohn: No.

Commissioner Prouty: Canadian to Waynoka?

Mr. Strohn: No, nothing east of there to Chicago.

Commissioner Prouty: Proceed.

1549 Mr. Mayer: I think that is all I want to ask this witness.

Mr. Norton: Would the Commissioner like a statement of the helper mileage?

Commissioner Prouty: You say that substantially appears in the consist?

Mr. Norton: It shows it, shows where the helper engines are used.

Commissioner Prouty: I think that is sufficient. There is testimony already given, of course.

Mr. Norton: Suppose such a case was presented to you, that citrus fruit comes from Los Angeles destined beyond Chicago over the Santa Fe. The question was put whether it would be taken by the Indiana Harbor route or by some other route. Is it not true that circumstances of transportation may send it by various routes after leaving your rails?

Mr. Strohn: That is——

Mr. Norton: Conditions may exist which would make it preferable for you to leave it at Streator rather than at Indiana Harbor, and tomorrow you might prefer to deliver it at Indiana Harbor?

Mr. Strohn: Yes, sir.

Mr. Norton: Or at Joliet, is that true?

1550 Mr. Strohn: Yes, sir, but I think it is routed.

Mr. Norton: You think it is all routed?

Mr. Strohn: Yes, sir, I think so.

Mr. Norton: Well, even where it is routed, the point of delivery from your rails to a connection depends in considerable part upon the connection that is to take it, does it not?

Mr. Strohn: You mean where we would reach that connection?

Mr. Norton: Yes, how we would reach that connection.
Mr. Strohn: Yes, sir.
Mr. Norton: Can you reach all your eastern connections over the Indiana Harbor, for example?
Mr. Strohn: Yes, sir.
Mr. Mayer: That is the way it is routed, I am told.
Mr. Strohn: The majority of it is, yes.
Mr. Mayer: The majority of this citrus fruit is routed via Indiana Harbor, is it not?
Mr. Strohn: Yes, sir; but it does not come into Chicago, though; it goes via McCook.
Mr. Norton: You were questioned about the expedited service of this fruit. I will ask you to state whether it moves more rapidly from the Coast to destination over the Santa Fe rails than other Red Ball freight and other fast freight?
1551 Mr. Strohn: Yes, sir, it does as a rule.
Mr. Mayer: Are you referring to other Red Ball freight on your line, or other Red Ball freight on other lines?
Mr. Norton: Other Red Ball freight on the Santa Fe.
Mr. Mayer: Well, he has told us about that already. He says they mix it indiscriminately.
Mr. Norton: But the trains containing the oranges make better time to the east than other Red Ball freight?
Mr. Mayer: He said otherwise before.
Mr. Norton: Well, I will examine Mr. Peabody concerning that. Do you know anything about that, Mr. Strohn?
Mr. Strohn: I know we run those trains often ahead of time because they have considerable citrus fruit in them.
Mr. Norton: I will get at that more specifically from another man. You spoke about manning the trains which run over the San Bernardino Mountains with two brakemen. I will correct you. There they have three, over the mountains.
Mr. Strohn: Yes, sir, I believe they do have what they call an extra.
Mr. Mayer: How does it happen that you know more about that transportation situation than the witness, who is Superintendent of Transportation?
1552 Mr. Norton: Well, I happened to live out there for about seven years, and I have some knowledge about it.
Mr. Strohn: But I know they do going up that steep hill have another man, three.
Mr. Norton: The San Bernardino property is a terminal property, and the Santa Fe Company has shops there in which all kinds of repairs and some building is done.
Mr. Strohn: Yes, sir.
Mr. Norton: This pre-cooling plant you have mentioned, with large freight facilities—San Bernardino is the largest terminal point of the Santa Fe in California?
Mr. Strohn: Yes, sir.
Mr. Mayer: What is the population of San Bernardino?
Mr. Strohn: I could not tell you.

Mr. Mayer: About 3,000?

Mr. Norton: They claim on a board up at our station about 20,000.

Commissioner Prouty: I think they told me out there some 15,000 or 16,000.

Mr. Mayer: They have grown since I was out there.

Mr. Norton: Yes, it is one of our biggest shop points. Some questions were put to you about cheaper operation by reason
1553 of large locomotives, large cars, and so forth. I will ask if it is not a fact in experience that the damage to goods in transit is greater by reason of those enlarged facilities than it used to be, in the manner of handling?

Mr. Strohn: The larger the trains the more danger there is of rough handling.

Mr. Norton: Well, do you know whether it is a fact that the damage to shipments is greater than it used to be?

Mr. Strohn: Yes, sir.

Mr. Norton: Do you know whether the tonnage of coal out of Gallup, New Mexico, for example, on the Santa Fe, is greater than the tonnage of citrus fruit out of Southern California, on the Santa Fe?

Mr. Strohn: I could not say without examining the records.

Mr. Norton: That is all.

Mr. Dillard: While in the last several years the reduction of grades, the laying of heavy rails and the building of cars of larger capacity and locomotives of greater power have all made for a less cost of operation, is it not true that the increase in the cost of material and wages has nearly or quite balanced or possibly overbalanced the economies produced by the things that I have named?

1554 Mr. Strohn: I think it has.

Mr. Dillard: That is all.

Mr. Mayer: Do you know the total cost of increase in material? Yes or no will answer this question.

Mr. Strohn: Well, what kind of material?

Mr. Mayer: The kind you had in mind in answering Judge Dillard's question.

Mr. Strohn: Do I know the total cost?

Mr. Mayer: Yes.

Mr. Strohn: No.

Mr. Mayer: Do you know the total cost of the wages of the company, or the increase——

Commissioner Prouty: Well, we will not spend much time on that. I suppose Mr. Dillard wanted to emphasize the fact that there were certain things to offset the advantages to which Mr. Strohn had testified. He would hardly rely upon this witness to substantiate that fact.

Mr. Mayer: I can hardly tell whether he was testifying himself or relying on this witness, but I supposed he was going to argue before the Commission——

Commissioner Prouty: I think we would assume this witness would know nothing material about it.

1555 Mr. Mayer: Then there is no other question on that. Don't you know as a matter of fact that the loss and damage to citrus fruit on account of claims is less than it was and it is decreasing?

Mr. Norton: I was speaking generally.

Mr. Mayer: I didn't say you were talking about it. I am talking about citrus fruit. We are talking about that rate in this case. Answer the present question.

(Question read.)

Mr. Strohn: No, I don't know.

Mr. Mayer: Do you know anything about it at all?

Mr. Strohn: I simply know that the longer freight train you haul the more chance there is for damage and rough handling.

Mr. Mayer: Is that all you intended to say in answer to Mr. Norton's question to you on the subject of damage to goods?

Mr. Strohn: Yes, sir.

Mr. Mayer: That is all.

Commissioner Prouty: Your division from Argentine to Marceline is your first division this side of Kansas City?

Mr. Strohn: Yes, sir.

1556 Mr. Norton: That rough handling would and does result also from the air brakes and large locomotives and powerful brakes——

Commissioner Prouty: We will not spend any more time on that.

Mr. Strohn: Yes, sir, it might.

Mr. Mayer: Did you ever hear of a large locomotive or air brake causing any damage to citrus fruit?

Mr. Strohn: Did I ever hear of it?

Mr. Mayer: Yes.

Mr. Strohn: I have heard of——

Mr. Norton: They put up almost every sort of thing as a cause for claims——

(Question repeated.)

Mr. Strohn: Yes, I have heard of it.

Mr. Mayer: You have heard of an injury occasioned in that way?

Mr. Strohn: I have heard of a good many cars being broken up that way, yes, sir.

(Witness excused.)

1557 Mr. Mayer: Will you tell me who is responsible for this recapitulation?

Mr. Norton: Mr. Peabody. Mr. Nicholson has been out of town for nearly a month. Could you examine him next so that he can go?

Mr. Mayer: What is the subject matter?

Mr. Norton: Well, he is in charge of traffic.

Mr. Mayer: I cannot answer as to whether I want him until I examine the person who made the recapitulation.

JAMES PEABODY, was recalled as a witness, and having been previously sworn, testified as follows:

Mr. Mayer: You have been a witness in this case?
Mr. Peabody: Yes, sir.
Mr. Mayer: You have been sworn as a witness in this case?
Mr. Peabody: Yes, sir, I have been sworn.
Mr. Mayer: Did you prepare the consist that has been produced here today?
Mr. Peabody: This sheet?
Mr. Mayer: No, the consist.
Mr. Peabody: It was prepared in my office under my direction.
1558 Mr. Mayer: What is your position?
Mr. Peabody: Statistican of the A. T. & A. F. System.
Mr. Mayer: Are you in the habit of making statistics of your own volition or under directions?
Mr. Peabody: Both; mostly of my own volition.
Mr. Mayer: Now this consist which you have produced here, including the recapitulation thereof, was made under your directions?
Mr. Peabody: Yes, sir, in my office.
Mr. Mayer: And you caused it to be made because of certain specific instructions which you received either from the law department or some officer of your railroad?
Mr. Peabody: I caused it to be made because of Mr. Commissioner Prouty's instructions at the hearing in Los Angeles, and it is made exactly in accordance with his instructions.
Mr. Mayer: That is, you think so.
Mr. Peabody: I know so. I don't think anything about it.
Mr. Mayer: Will you please take the recapitulation sheet. Have you it?
Mr. Peabody: Yes, sir.
Mr. Mayer: This is not at all by way of scolding——
1559 Mr. Peabody: I understand.
Mr. Mayer: But if you will be good enough, where I ask a question to be answered yes or no, to answer it that way, it will enable us to get along much more quickly.
Mr. Peabody: With the provision that I can explain by yes or no.
Mr. Mayer: Any time the Commissioner thinks it should be explained, it will be for the Commissioner to determine it. I have no power to determine it. I may have a very settled opinion about it, but have no power to determine it, but I make the suggestion for the sake of economy of time.
Mr. Peabody: A great many questions can not be answered yes or no in the railroad business.
Mr. Mayer: Will you please tell me whether you have produced any information contained either in the consist itself or in the recapitulation from which you can tell exactly how many cars were in each single train as it went from San Bernardino to Chicago, and what the contents of each car was?
Mr. Peabody: Which question shall I answer? There are two questions there.

Mr. Mayer: Scratch out "and what the contents of each car was."

1560 Mr. Peabody: Yes, sir, I can. I have in this consist the exact showing for each train that was handled during that week over each division, showing the number of cars——

Mr. Mayer: Well, I know what is on there. You need not tell me, but just answer my question, please. Read the question.

(Question read.)

Mr. Peabody: There was no single train went from San Bernardino to Chicago, and I cannot answer that question.

Mr. Mayer: Look at the second line of the recapitulation.

Mr. Norton: Now Mr. Peabody, if you will permit the interruption, do you want to say anything further.

Mr. Mayer: Does the Commission permit that kind of examination of an expert accountant or statistician? I only suggest it ought not to be proper, because I know what it will lead to.

Mr. Norton: We want what the consist shows.

Mr. Mayer: There is certain information that I want, and I am asking questions, and when the questions are improper the Commissioner will not permit them to be answered; but when they are answered should not I be permitted to go further and ask such information as I want?

1561 Commissioner Prouty: Sometimes we get along faster by exhausting each question by itself, and sometimes we get along faster by exhausting each lawyer by himself. You may proceed, Mr. Mayer.

Mr. Mayer: Look at the second line of the recapitulation of the consist, where it says citrus trains, 17 between San Bernardino and Barstow. Do you see it?

Mr. Peabody: Yes, sir.

Mr. Mayer: Can you tell me exactly what the consist was of each one of those 17 trains?

Mr. Peabody: From this line?

Mr. Mayer: From that line.

Mr. Peabody: No, sir.

Mr. Mayer: Can you from what is in the consist itself?

Mr. Peabody: As to the number of cars?

Mr. Mayer: Repeat the question.

(Question read as follows:)

"Mr. Mayer: Can you tell me exactly what the consist was of each one of those 17 trains?"

Mr. Peabody: Yes, sir.

Mr. Mayer: From what, the consist?

Mr. Peabody: The consist.

1562 Mr. Mayer: Can you from the consist show the contents of each car that made up each of those 17 trains?

Mr. Peabody: No, sir.

Mr. Mayer: Can you from any documents you have produced here state what the contents were of each car in each of the trains

between the various divisional points referred to in the recapitulation of the train consist?

Mr. Peabody: From those that have been produced here?

Mr. Mayer: From whatever has been produced here, yes; that is to say, either the consist or the recapitulation thereof.

Mr. Peabody: Not that has been produced. I have the information.

Mr. Mayer: Now then, so far as you have produced anything here then in looking at the column on the recapitulation entitled total tons of gross weight in each citrus train, you cannot tell how much of that pertained to citrus fruit and how much to other freight?

Mr. Peabody: There is no column so headed.

Mr. Mayer: I didn't ask you that.

Mr. Peabody: I haven't any such column to look at.

Mr. Mayer: Read the question.

1563 (Question read.)

Mr. Peabody: There is no such column, so entitled in the recapitulation.

Mr. Mayer: I will ask the Commissioner to direct the witness to answer the question.

Commissioner Prouty: Have you produced anything from which that can be determined?

Mr. Peabody: No. There is no such column in the recapitulation.

Mr. Norton: What is wanted?

Mr. Peabody: He is referring to a column in this recapitulation

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Commissioner Prouty: I do not think Mr. Peabody was requested to produce anything which would show the contents of the loaded cars, but was required to produce a statement showing the number of cars of citrus fruit and the number of loaded cars and empty cars in each train?

Mr. Norton: I have your request, and that is correct. He was not requested to produce what is being called for.

Mr. Mayer: Can you tell, have you the means of ascertaining the total tons gross weight and the total tons net weight of each

1564 train from San Bernardino east to Chicago, and itemizing it so as to show the weight of the citrus fruit contained therein and the weight of the other freight contained therein?

Mr. Peabody: Yes, sir.

Mr. Mayer: Will you produce such information, please.

Mr. Norton: That is shown on this sheet, is it not?

Mr. Peabody: No, sir.

Commissioner Prouty: Well, while not shown on this sheet, the information exists in the record from which that can be substantially determined, because the record shows the loads of these cars of citrus fruit and the weight of the cars. It will be necessary to show, of course, whether the car was iced or not, in order to know the weight of the car of citrus fruit.

Mr. Peabody: There it is (producing two large bundles). The ice is taken into account in each case.

Commissioner Prouty: I know you have taken into account the ice in each case, but by taking the number of cars and the weight as already shown we can determine that, I think.

Mr. Peabody: There is every wheel report covering the movement of each car.

Commissioner Prouty: We will not take time to look at
1565 those.

Mr. Peabody: That is what he asked for.

Commissioner Prouty: Does not this recapitulation show with sufficient detail everything you need to know?

Mr. Mayer: It is entirely misleading, that is the reason of this examination, it is wholly misleading. To illustrate, so I can tell briefly what is in my mind, take the citrus fruit. He shows the number of trains run were 17. Now then he makes this report in the recapitulation from which he is going to claim that the average weight gross and net per train is not so much as the westbound, and he is going to make an argument based on that and based on all of the information that he has in here. Now, unless we know what those 17 trains each consisted of, the column "total tons of gross weight" and "total tons of net weight" is absolutely and wholly useless. He shows for instance as you get to the right of the sheet that there were 34 citrus cars, 13 other loaded cars, and 3 empties, so there was a total of 50 between those divisional points. Now if you want to find out anything about tonnage, unless he will give it to us accurately, and he says he can, then it is useless. We can take for instance an average of those 50 cars and 17 trains,
1566 which handled he says 583 cars of citrus fruit, 217 loaded with other freight, and 51 empty cars, and we get exactly the same situation, if we will take 10 trains of 50 citrus cars each, and one of 45 citrus cars plus 5 other filled cars—this is only by way of illustration—and also 5 trains of 6 citrus cars and each also having 40 cars loaded with other merchandise, and each of those five having 4 empties, and also by taking one train consisting of 8 citrus cars and 12 other loaded cars and 30 empties; we find we will have the same aggregate of citrus cars and other loaded cars and empties.

Mr. Norton: But we did not haul those supposed trains.

Mr. Mayer: We don't know. And in the same way other combinations can be made up, and in the same way—I want to illustrate to the Commissioner why I consider this simply encumbering the record and of no value unless he gives the information we asked for—we can take 8 trains and take 60 cars of citrus fruit each and one of 50 citrus cars and 5 of 10 citrus cars and three of one citrus car, and we will have 17 trains containing 583 citrus cars, and all we have got to do is to put in one of them 11 other filled cars and in five of them 40 each filled with other merchandise and in
1567 three of them 2 other filled cars and we will have an aggregate of 217 other cars. Have I made that plain to your Honor?

Commissioner Prouty: I have no means of knowing what you expected to infer from the information, but I know what I had in mind when I asked him to furnish it, and the statement furnished

by him exactly fills that bill. That is, it would convey to me precisely what I want to know.

Mr. Peabody: I would also say the statement shows the number of citrus cars in each train, the number of other cars in each train, and the number of empties in each train, and the engines hauling the train and the contents of each train separately. That is exactly what he wants to know and which he says I have not furnished.

Mr. Mayer: Of course I have not the advantage of knowing what your Honor had in mind——

Commissioner Prouty: What I had in mind was the general way in which this traffic was handled as compared with other traffic, and this statement indicates that very plainly to my mind.

Mr. Mayer: This recapitulation?

Commissioner Prouty: This recapitulation.

Mr. Mayer: See how misleading it is.

1568 Commissioner Prouty: In what way?

Mr. Mayer: On the question of tonnage, how can you tell if you compare the westbound tonnage with the citrus fruit tonnage unless you know what the loading of the westbound train was and what was included in these 17 citrus trains, as to how many citrus cars?

Mr. Norton: You do know. He shows that.

Mr. Peabody: We have the loading of every train separately.

Mr. Mayer: That is the average.

Mr. Peabody: No, you have the loading of every train.

Mr. Dillard: Does not the consist give you what you want?

Mr. Mayer: Possibly it does.

Mr. Dillard: In the consist it shows exactly that.

Commissioner Prouty: You have the number of cars of citrus fruit, the number of other loaded cars in the trains, and the number of empty cars in each one of the 17 trains.

Mr. Mayer: Let me ask a few questions. Of course I have not examined the statement fully——

Commissioner Prouty: You have not in the consist anything which shows the loading of the loaded cars other than citrus fruit. That we know from testimony taken in California.

Mr. Mayer: Yes, as to the citrus cars, but we don't know

1569 it as to the others.

Commissioner Prouty: No.

Mr. Mayer: We cannot tell the proportion of dead weight to live weight on citrus fruit, when you come to compare it with the other, unless we know the dead weight and the live weight of other freight.

Commissioner Prouty: Not exactly, but then there is a good deal of testimony in this case to show the comparative net weight loading of citrus and other cars, as I remember.

Mr. Peabody: It is all in the case, the average dead weight and live weight and the exact dead weight and live weight.

Mr. Dillard: We have shown the gross tonnage.

Mr. Peabody: Yes, sir, every one of them.

Mr. Dillard: If he shows the gross tonnage and average loading

of citrus cars and other cars, we can determine it.

Commissioner Prouty: Yes, there is in the record sufficient I think to determine with sufficient exactness what the cars contained.

Mr. Mayer: I wanted to see in this case if we could not get a record in this case which would disable the Commission from saying that the evidence is insufficient on certain things. We think
1570 we can furnish the Commission with evidence of that nature, and I think that the Commissioner will encourage me in that direction providing I limit the inquiry within reasonable bounds.

Mr. Norton: The Commission is pretty well informed on what it wants, and generally asks for it.

Mr. Mayer: There has been a good deal of information we have asked for, and have learned in this record for the first time. For instance it has always been claimed heretofore that refrigeration was conducted at a loss, and we find in this case for the first time that you have included repairs, depreciation, and so forth.

Commissioner Prouty: Let us proceed.

Mr. Mayer: On your recapitulation sheet, under the column, "total tons of gross weight," what have you included?

Mr. Peabody: The weight of the load and the weight of the car.

Mr. Mayer: Have you included the weight of the engine?

Mr. Peabody: No.

Mr. Mayer: Of the ice?

Mr. Peabody: Yes, sir, where it was ice.

Mr. Mayer: The tender?

1571 Mr. Peabody: No.

Mr. Mayer: The caboose?

Mr. Peabody: Yes, sir.

Commissioner Prouty: How do you get at the weight of the ice?

Mr. Peabody: We know how much is put in and we took an average of four tons all the way through. We found that by experiment, that what we put in and what we had left when we got through, that the average weight was four tons, and we used four as an average.

Mr. Mayer: How much did you include in making up that schedule for the weight of the caboose?

Mr. Peabody: Whatever the caboose weighed. We have the actual weight of every caboose we have on the road.

Mr. Mayer: Did you take the average or the weight of each caboose on each train?

Mr. Peabody: We took the weight of each caboose on each train We have a schedule made for the conductor, and he gives it to us on each train. I have a copy here if you would like it. We have also a schedule of the weight of each individual car.

Mr. Mayer: Did you include the tender?

1572 Mr. Peabody: No, sir.

Mr. Mayer: Now as a matter of fact you know, or is this out of your line, that the capacity of the bunkers on some of those refrigerator cars is only four and a half tons.

Mr. Peabody: Very very few of the smaller cars have that capacity of bunkers. The majority——

Mr. Mayer: Do you know how many?

Mr. Peabody: I don't know how many, but quite a few of the older cars, some of them are smaller than the newer cars. Some of the last ones are six ton cars, as I understand. But we arrived at our ice weight by the actual experiments conducted over quite a long time.

Mr. Mayer: Do you know what the character of the merchandise was that was on the westbound trains?

Mr. Peabody: I have a statement showing all sorts of merchandise going into California, everything on earth.

Mr. Mayer: And that was all included in making up your statement here, I suppose?

Mr. Peabody: All included.

Mr. Mayer: On the next to the last column on the recapitulation we find "average time between terminals."

Mr. Peabody: Yes, sir.

1573 Mr. Mayer: Does that column show the actual running time from the time the train started from one terminal until the time it reached the other terminal?

Mr. Peabody: It does. This is the average time for the number of trains here. The individual time of each *time* is shown in the consist.

Commissioner Prouty: Is there anything which shows the time spent at terminals?

Mr. Peabody: No.

Mr. Mayer: That is just what I was going to ask, your Honor.

Mr. Peabody: No, I haven't anything on that.

Mr. Mayer: Is there a record kept by any of your train employes at any place as to the time spent at the divisional or terminal point by a train?

Mr. Peabody: Yes, sir, I can give you the time of each train in and the next train out.

Mr. Mayer: Then if you took the time you would have the means at hand to tell us not only the average time between terminals but also the actual time at each terminal?

Mr. Peabody: Yes, sir.

Mr. Mayer: Is that right?

1574 Mr. Norton: If you took the time and spent the money, should *should* say.

Mr. Peabody: We could tell—do you mean the aggregate time?

Mr. Mayer: The actual elapsed time from the time a movement begins until it reaches its termination.

Mr. Peabody: We could for each car. That would not be possible for any train, because there is no train that is intact over the separate division. We can tell each car and can follow each car.

Mr. Mayer: Then as a matter of fact your column for the time between terminals, without knowing how much time was spent by each train at each terminal does not enable us to determine how long it actually took the train from its initial movement to its destination, does it? Yes or no.

Mr. Peabody: I would say no, and explain it by saying there is

no such train which goes through in that way. We can give you the time of each car from point of origin to destination.

Mr. Mayer: But you have not done so, have you?

Mr. Peabody: Yes, sir, it is in the record.

Mr. Mayer: Whereabouts? Will you just tell me one car.

Mr. Peabody: I don't know, it was given at Los Angeles, the average number of hours per car between San Bernardine
1575 and Chicago.

Mr. Mayer: You do not pretend to have furnished it here?

Mr. Peabody: No, but it is in the record.

Mr. Mayer: You mean somebody testified to his opinion about it?

Mr. Peabody: No, we have the actual record about it. Mr. Leeds testified to it. You will find it in his testimony, the actual time consumed.

Mr. Mayer: What was your purpose in furnishing the information under the head "average time between terminals?" Did the Commissioner ask you to furnish that?

Mr. Peabody: No, that was to show——

Mr. Mayer: Who did ask you to furnish that?

Mr. Peabody: Wait. You asked my purpose in making that, and I will answer that question.

Mr. Mayer: Go on.

Mr. Peabody: It was made for the purpose of showing that the trains containing citrus fruit almost invariably moved between terminals faster than the trains which do not contain citrus fruit.

Mr. Mayer: Who told you that was an element of importance in this case?

1576 Mr. Peabody: Nobody.

Mr. Mayer: Did you consider it one of importance?

Mr. Peabody: I have some common sense, I hope.

Mr. Mayer: Then as a matter of fact without knowing how long a time was spent at each terminal, the information on this sheet may be misleading; is not that true?

Mr. Peabody: No, sir, because it compares each train with each other train under the same condition.

Mr. Mayer: But you said you could not follow a train from beginning to end?

Mr. Peabody: No, but I am taking the trains on the same division, different trains between their stopping and starting time on each division.

Mr. Mayer: Please look at the second line on the recapitulation sheet?

Mr. Peabody: Yes, sir.

Mr. Mayer: That shows that the 17 citrus fruit trains averaged 7 hours and 43 minutes in moving between the various terminals, does it not?

Mr. Peabody: No, it shows that they averaged 7 hours and 43 minutes between San Bernardino and Barstow.

Mr. Mayer: And Barstow?

1577 Mr. Peabody: Yes, sir.

Mr. Mayer: Yes, I beg your pardon, you are right. Now the other eastbound trains went in nine hours 33 minutes——

Mr. Peabody: Between the same two points, yes, sir.

Mr. Mayer: Now, if neither of those trains, the citrus fruit train nor the eastbound trains stopped at Barstow, and both moved on from there to Needles, in the same period of time between Barstow and Needles, then your recapitulation would show that the other eastbound trains moved more slowly than the citrus fruit trains, would it not?

Mr. Peabody: I will have to ask for that question again.

Mr. Mayer: Scratch it out. I will put one intermediate and plainly to you. Look at the next point, between Barstow and Needles.

Mr. Peabody: Yes, sir.

Mr. Mayer: That shows that the 21 citrus trains moved on an average or took on an average 13 hours and 17 minutes between those two points, does it not?

Mr. Peabody: That is right.

Mr. Mayer: You cannot tell, can you, how long any one of those 21 trains took?

Mr. Peabody: Yes, sir, I have the actual time of each one
1578 of them in the consist.

Mr. Mayer: That will show on there, will it?

Mr. Peabody: Yes, sir, the actual time of each one.

Mr. Mayer: It also shows that the other eastbound trains between Barstow and Needles occupied 14 hours and 26 minutes on an average; is that correct?

Mr. Peabody: Yes, sir, from the leaving time to the arriving time.

Mr. Mayer: Now assume, suppose that the citrus trains in question stopped at Barstow for some reason for six hours each, which trains got to Needles first, the citrus trains or the other eastbound trains?

Mr. Peabody: I don't know whether—does your assumption include that the other did not stop any time?

Mr. Mayer: Yes.

Mr. Peabody: Then probably the other trains would get there first.

Mr. Mayer: So that the element of stoppage and length of stoppage is important for us to know which train got to Chicago first?

Mr. Peabody: That has already been testified to.

Mr. Mayer: I didn't ask you if it had already been testi-
1579 fied to.

Mr. Peabody: Well, that is the fact, if you want it, if you think it is important.

Mr. Mayer: I think that is all.

Mr. Norton: The time for which this consist and the recapitulation thereof were made is the time of the heaviest movement of citrus fruit out of California, is it not?

Mr. Peabody: It is one of the heaviest months, yes sir. March, April and May are all heavy months.

Mr. Norton: In the column headed on this recapitulation, "average cars handled per train," that is the third division from the

right, I see that the 17 citrus trains contained on an average 34 citrus cars, 13 other loaded cars, and 3 empties during the month covered by this statement. Is that correct.

Mr. Peabody: During the week covered by this statement.

Mr. Norton: During the week, I should say.

Mr. Peabody: That is right.

Mr. Norton: A total of 50 cars in the train. Have you inquired why there were three empty cars in the train of 50? That three empties would really mean a caboose and two others.

Mr. Peabody: One is a caboose, and I don't know why
1580 the other two cars were put in, going out to some point.

Mr. Norton: We referred to that. Is it not true that of the 17 trains that 11 were without empties and 6 or the 17 trains only had empties?

Mr. Peabody: That is right. 11 of those trains simply had the caboose and the other 6 trains carried the empties. One of the trains had 9 empties, and one had 5 empties, and one of the trains had 3 empties, but in the majority of them—there were 11 of them that had no empties except the caboose.

Mr. Mayer: As I understand, your consist will show the details of all this?

Mr. Norton: Yes. Now in the same column we drop down to the 6th, and we find 6 empties in a train containing 17 citrus cars, that is on an average of 27 trains. Is it not true that of those 6 empties, of those 27 trains, one train had only 5 citrus loads and 35 empties?

Mr. Peabody: 35 empties.

Mr. Mayer: These questions you are asking are from a detailed list before him?

Mr. Norton: Yes.

Mr. Mayer: And that is the consist?

1581 Mr. Norton: Yes.

Mr. Peabody: 5 citrus fruit, 8 other freight, and 33 empties.

Mr. Norton: One train had 5 citrus fruit and 35 empties, another had 11 citrus and 10 empties, and another 2 citrus and 21 empties.

Mr. Peabody: That is right. Another had 12 citrus and 21 empties, and another 4 citrus and 11 empties.

Mr. Norton: I am just calling attention to that to show they were not all loaded with citrus fruit. Going to the column four from the right, showing the average weight per train, the gross tons and net tons, is there anything you want to explain about that?

Mr. Peabody: In order to avoid a possible misunderstanding there, it should be said that the tonnage is arrived at over the division by dividing the total ton miles by the number of miles. Of course if a car was set out part of the way over or any empties set out or taken up or anything of that sort, while the car would have to be counted in the number of cars in the train, the number of miles would only apply to the number of miles run, so to obtain the actual weight over the division the total ton miles for all the cars have been
1582 divided by the length of the division, giving the average movement over the division in weight?

Mr. Norton: The column headed "citrus" in the fourth division at the right, starts out with 34 citrus cars in the train, and we find on the Shopton-Chillicothe Division in Illinois 12 in a train of 34 in the train.

Mr. Peabody: Yes, the average for the 24 trains is 12 citrus cars per train.

Mr. Norton: This column indicates generally that there are fewer citrus cars in the trains as they proceed east?

Mr. Peabody: If you will observe that citrus column you will see a gradual decline right along down, starting from 34 and ending down to 12 or 13, the number of cars in the train, showing how the trains get mixed up.

Mr. Norton: The second column from the right headed "average time between terminals" shows generally, with only two exceptions as I observe it, that this citrus business, the trains containing citrus fruit, move more rapidly between terminals than any other freight.

Mr. Peabody: It does, and I want to say in explanation of that, and also that this statement may be understood, that the
1583 consist statements are divided into two sections, one covering what we call our Train No. 34, which frequently runs in first, second and third sections; for instance, first 34 and third 34 means sections of those trains, and then another portion of the sheet shows the extra trains which carry no numbers; they run when it is convenient and do not run on a schedule, and they carry some citrus fruit.

Mr. Norton: Are they included in the recapitulation?

Mr. Peabody: They are all included in here, and included in the average time. And those trains also move faster when they has citrus fruit in them than when they do not.

Mr. Norton: This train which contained 2 citrus cars and 21 empties moved then more rapidly between terminals than other freight trains?

Mr. Peabody: Yes, sir. When a train contains citrus fruit, one or more cars, it moves faster.

Mr. Norton: As I understand the last column to the right on the recapitulation, it shows that with few exceptions the citrus movement or trains containing citrus cars eastbound made better than the schedule time during the week covered by the statement?

1584 Mr. Peabody: The scheduled time is shown over each division here, and the actual time consumed is also shown, showing that the trains carrying citrus fruit exceeded the schedule in a great many cases.

Mr. Mayer: Have you the schedule time here? You were to send for it a few hours ago.

Mr. Peabody: Yes, sir. We have got it. I think Mr. Leeds testified—well, it will not be necessary to say what he testified. It will speak for itself.

Mr. Mayer: It will not strengthen it any by repeating it.

Mr. Norton: Have you another set of these time sheets?

Mr. Peabody: We have plenty of them at the office. They are our regular time cards.

(Papers produced and handed to Mr. Mayer by Mr. Norton.)

Mr. Mayer: This bundle——

Commissioner Prouty: Can you not extract from those the running time of the trains without offering them in evidence?

Mr. Norton: That is why I turned them over to counsel.

Mr. Mayer: I want to get it accurately.

Mr. Peabody: Mr. Leeds testified to the scheduled time of Train 34, and to the average movement.

1585 Mr. Mayer: He testified 169 hours and his testimony does not agree with your statements. That is the reason I want to get it exact.

Mr. Peabody: He testified to 169 as the gross time. I think that is correct. His statement includes the lost time at the stations and this statement does not.

Mr. Mayer: We are not a bit interested in this statement.

Mr. Peabody: This shows the relative movement between stations.

Mr. Mayer: Is not the shipper interested in knowing how long it takes to move it from a given point of origin to the terminal point?

Mr. Peabody: Certainly.

Mr. Mayer: Do you think he is interested in knowing how quick it moves between intermediate points?

Mr. Peabody: Well——

Commissioner Prouty: Cannot you take those time cards and ascertain whether the time as shown on them is the same as the time shown by Mr. Leeds?

Mr. Mayer: I think we can.

Commissioner Prouty: If it is the same we will not need to have them introduced.

1586 Mr. Mayer: I will do that.

Mr. Norton: I can have Mr. Peabody check these and add the scheduled time on the list tonight, if desired.

Mr. Peabody: We have one of our men here, Mr. Nelson, who can tell you off hand the scheduled time.

Mr. Mayer: We need not encumber the record. You can go over it with us after the Commission adjourns and we can put it right on that paper with a heading "Time as shown on your printed schedules," or something to that effect. Is that agreeable to the Commissioner?

Commissioner Prouty: Yes.

Mr. Mayer: That will save the time of the Commission.

Mr. Norton: In column five from the right headed "citrus" I don't know whether I referred to that or not, and to the number of cars handled. You start out with 583 and run down to as low as 290.

Mr. Peabody: You mean total cars handled?

Mr. Norton: Total cars handled.

Mr. Peabody: That is the fifth column from the left and not from the right.

Mr. Norton: That indicates a diminution of the number of citrus cars in trains as the trains progress eastward.

1587 Mr. Peabody: It starts out with 583, which happened on

the Los Angeles Division for that week, and ends up with 290 at Chillicothe.

Mr. Norton: In the operation of these citrus trains east, the empties, I should gather from your other eastbound tabulation are carried largely in other trains than the citrus trains. Is that correct?

Mr. Peabody: Oh, yes, sir, very much larger.

Mr. Norton: There are none carried in citrus trains where it is possible to avoid it?

Mr. Mayer: Well, this record shows they are carried.

Mr. Norton: There are some, yes.

Mr. Peabody: There are some, there are a few carried in citrus trains, but a very much larger number is carried in other trains.

Mr. Norton: But there is no dead weight carried in citrus trains?

Mr. Mayer: That is because the other freight does not come as fast, it does not come as regularly, daily, and not in as large volume as the citrus. Isn't that the fact?

Mr. Peabody: No, because——

Mr. Mayer: Is not that the fact?

1588 Mr. Peabody: You asked the reason. The other freight does not come as fast as the citrus at this time of year——

Mr. Mayer: At any time of year, is there any which comes in as big volume?

Mr. Peabody: No, but the reason for the movement of the empty cars is because we have them out there and have to haul them back.

Mr. Mayer: You want to get them back east as fast as you can.

Mr. Peabody: Certainly we want to and get them back east with all due economy.

Commissioner Prouty: Is your empty box car movement east or west?

Mr. Peabody: Our empty box car movement is east. We carry a great many out there that there is no loading to bring in them back.

Mr. Norton: You carry box cars with loads that might have been put in refrigerated cars if you could stop the cars for loading, don't you?

Mr. Peabody: Yes, sir. At certain seasons of the year we cannot hold our refrigerators to load westbound with merchandise and have to rush them west empty.

1589 Mr. Norton: These empties which are carried in the other trains and also citrus trains, might not have been taken out there if it had not been for the citrus fruit.

Mr. Peabody: Yes, sir.

Mr. Mayer: What have they to do with citrus business? They are not refrigerator cars. Is it a fact that you haul refrigerator cars east empty?

Commissioner Prouty: I was talking about westbound.

Mr. Norton: We haul box cars with loads in the same train westbound with empty refrigerators, which refrigerators might contain the loads if we had time to stop and load them; is that correct?

M. Peabody: That is correct, at certain seasons of the year.

Mr. Norton: Therefore those box cars come back from California without loads because of this citrus fruit business?

Mr. Peabody: Yes, sir.
Mr. Norton: And that is shown at large in this tabulation?
Mr. Peabody: Yes, sir.
Commissioner Prouty: The testimony already shows the movement of empty refrigerator cars to the east, but that movement, as I remember it, is the movement of cars which had gone west
1590 loaded with packing house products, which are not moved east loaded with citrus fruit.
Mr. Peabody: Yes, sir. We cannot use those cars for fruit. And it also shows the eastbound movement of refrigerator cars would include also the movement of refrigerator cars which went west to San Francisco loaded with merchandise and which were hauled down into Southern California to load with citrus fruit. That would be an eastbound movement although it would not be shown on this tabulation.
Mr. Mayer: It is cheaper to rush back these refrigerator cars empty than it is to get a sufficient supply of cars, is it not?
Mr. Peabody: No.
Mr. Mayer: You think it would be cheaper to have a sufficient number of cars, do you?
Mr. Peabody: No, it would be——
Mr. Mayer: That is what you have just said.
Mr. Peabody: Wait. I cannot answer it yes or no.
Mr. Mayer: You have answered it.
Mr. Peabody: I have not completed the answer.
Mr. Mayer: Proceed.
Mr. Peabody: It is not cheaper to buy an immense lot of
1591 refrigerator equipment which stands around on the track for six months in the year, simply to prevent the empty haul of a portion of those cars back when we need them on a rush.
Mr. Mayer: So the reason you haul back some of those refrigerator cars westbound empty is because it is cheaper than to have a larger number of refrigerator cars?
Mr. Peabody: Yes, sir.
Mr. Norton: Certainly, but it is expensive, nevertheless.
Mr. Mayer: No doubt about it, and we are paying you from $10,000 to $15,000 a trainload.
Mr. Norton: And we are rendering you that much service.
Mr. Mayer: I don't believe it, you cannot show anything else which comes up to such an income?
Mr. Norton: Yes.
Mr. Mayer: Well, do it, you haven't done it yet.
Mr. Norton: You are getting better service than anybody else is.
Mr. Mayer: You have not looked at the figures filed by Mr. Peabody in this case.
Mr. Norton: I think we have.
Mr. Mayer: Well, I did look at a sentence in the record where when your Honor saw those figures you gave forth an ejaculation which called forth testimony under oath different than
1592 the statement not under oath.
Mr. Norton: What is that?

Mr. Mayer: That is, when the statement produced by this gentleman undertook to show that the business was conducted at a loss, the statement which, if he had not been put on the witness stand and testified to, would have been a representation in writing by your company that this business was carried on at a loss.

Mr. Norton: There was nothing offered when he was not on the stand. He went on the stand with this statement and he——

Commissioner Prouty: It is hardly worth while to take time this afternoon to discuss that.

Mr. Norton: We resent the imputation. He went on the stand and was put under oath before it was offered, and was very willing to state what he meant by a loss of ordinary profit——

Mr. Peabody: If the gentleman means that I made two separate statements, one under oath and one not under oath, which are at variance, he is mistaken, to use a mild word.

Mr. Norton: A question or two suggested by Mr. Strohn's testimony. He was questioned as to whether we have any tonnage other than citrus fruit that comes from so small a territory
1593 in such large volume. What do you say to that?

Mr. Peabody: Yes, sir, we have.

Mr. Norton: What is it?

Mr. Peabody: Coal from Southern Kansas, which has very much greater volume and very much smaller territory; and coal from Gallup in the same way. We have lumber from Texas which from an equal territory moves in very much larger volume; and I have not in mind the fact of whether our grain movement from any similar territory anywhere would equal citrus fruit.

Mr. Norton: Some time was spent if not wasted upon the proposition that we have large equipment and large locomotives and so forth. I will ask you to state what is the average tonnage of a carload, notwithstanding our large engines?

Mr. Peabody: This is also in the record. The average tonnage of our revenue carload freight for the year ending June 30th, 1909, was 21.47 tons.

Mr. Norton: That is not quite 22 tons?

Mr. Peabody: That embraced the movement of 714,112 cars.

Mr. Norton: And we have an equipment that has a tonnage capacity of as high as 80 tons?

Mr. Peabody: Yes, sir, or 100,000 pounds.

1594 Mr. Norton: So we haul some big cars with little loads sometimes?

Mr. Peabody: Yes, sir.

Mr. Norton: Anything else you want to say about this recapitulation or your train consists?

Mr. Peabody: I think not.

Mr. Norton: That is all.

Commissioner Prouty: Do you know how many miles of helper service these citrus trains have?

Mr. Peabody: I don't know the number of miles, but on this consist the number of minutes employed by the helper service is stated in each case on every train. For instance, on that first train, a

helper 25 minutes; on the second train, No. 34, on the second, one helper 25 minutes, another helper 25 minutes, and a third helper 15 minutes.

Mr. Norton: How would it do for Mr. Peabody to draw off the time and mileage both?

Commissioner Prouty: I do not know that it is material.

Mr. Peabody: It would be an awful job.

Mr. Mayer: I would just like to ask you two or three questions. You have referred to the average tonnage of your revenue freight for the year ending June 30th, 1909, as being 21.47 tons,
1595 I think.

Mr. Peabody: Yes, sir.

Mr. Mayer: You carry a good many items that are much heavier and load heavier than citrus fruit, do you not?

Mr. Peabody: Yes, sir.

Mr. Mayer: Coal is one of them, is it not?

Mr. Peabody: Yes, sir.

Mr. Mayer: Your tonnage——

Mr. Peabody: I can give you the coal tonnage if you would like it.

Mr. Mayer: I wish you would.

Mr. Peabody: Coal averages 30.8 tons.

Mr. Mayer: What is the total—how many tons did you haul that year?

Mr. Peabody: How many tons of coal?

Mr. Mayer: Yes.

Mr. Peabody: 2,401,182.

Mr. Mayer: Will you give me the total of citrus fruit you hauled for the year ending June 30th, 1909?

Mr. Peabody: Yes.

Mr. Mayer: How much of oranges?

Mr. Peabody: I haven't it separated.

1596 Mr. Mayer: Give us both then.

Mr. Peabody: 217,813 tons.

Mr. Mayer: So that the total coal was more than ten times the tonnage of oranges and lemons, wasn't it?

Mr. Peabody: Yes, sir.

Mr. Mayer: Now give me the earnings from your coal, please.

Commissioner Prouty: Let me ask first, does your coal tonnage include your company coal?

Mr. Peabody: No, sir, this is all commercial.

Mr. Mayer: Now then give me your gross revenue from the oranges and lemons?

Mr. Peabody: And also miles hauled, because——

Mr. Mayer: I have not asked you for the miles hauled yet, have I?

Mr. Peabody: No.

Mr. Mayer: If you will stop volunteering we will get through quicker.

Mr. Peabody: I thought perhaps you might want that.

Mr. Mayer: What was the revenue on all citrus fruit for the year ending June 30th, 1909?

Mr. Peabody: $3,968,406.

Mr. Mayer: That is gross, of course?

1597 Mr. Peabody: It is total earnings that is received by the Santa Fe Road.

Mr. Mayer: You mean that is the amount that your railroad kept out of the freight received from hauling citrus fruit?

Mr. Peabody: That is right.

Mr. Mayer: And that is the amount that you had after you paid the connecting carriers their proportion of the freight, is that correct?

Mr. Peabody: That is not exactly correct, but that is the amount that was left after they had their proportion. We do not pay it. They pay it to us instead of we to them.

Mr. Mayer: That is what I meant. Will you be good enough to tell us how much your company got for hauling that 2,401,182 tons of coal?

Mr. Peabody: $3,771,150.

Mr. Mayer: Then your company's earnings from this citrus fruit, less than one-tenth the volume of the coal, exceeded your earnings from hauling the coal; is that right?

Mr. Peabody: That is right.

Mr. Mayer: Now, as a matter of fact, did you gather as much as 217,313 tons of coal from any territory as small as that from which the citrus fruit originates?

1598 Mr. Peabody: No—well, wait a moment. Yes, I guess you could add the coal producing points all together and they would not make as big a territory as the citrus fruit territory.

Mr. Mayer: That is not what I asked you.

Mr. Peabody: Well.

Mr. Mayer: Will you tell us the name of the city or village or place where there originates within a territory no larger than this citrus fruit territory as much as 200,000 tons of coal?

Mr. Peabody: The coal originates in very small territory. Most of our coal in Southern Kansas originates within ten miles of a placed called Pittsburg.

Mr. Mayer: Let us take Pittsburg; how many tons of coal do you haul which originates there?

Mr. Peabody: I don't know now. I could tell you at the office.

Mr. Mayer: Is it as much as 200,000 tons?

Mr. Peabody: I don't know.

Mr. Mayer: I wish you would ascertain that and attach an affidavit stating just how much originates there, and put it in this record, if the Commissioner will permit it.

1599 Commissioner Prouty: He may furnish a statement. I do not think there need be any affidavit about it. If you want, he may just write the Commission a letter stating the amount, which may be made part of this record.

Mr. Mayer: Will you do that, and mail us a copy of it at the same time?

Mr. Peabody: Yes, sir.

Mr. Mayer: Also let the same statement show what your earnings are for hauling that particular coal.

Commissioner Prouty: You should show——

Mr. Peabody: Have we got that worked out in that form, Mr. Nelson?

Mr. Nelson: We can work it out.

Mr. Peabody: I know, but we haven't it worked out.

Commissioner Prouty: That would not be very material when it was worked out. What are your earnings per ton per mile on your coal?

Mr. Peabody: The earnings per ton per mile on coal are 6.49 mills.

Commissioner Prouty: What on the citrus fruit?

Mr. Peabody: 9.21 mills per ton per mile.

Commissioner Prouty: It hardly seems to me that the gross earnings on that coal are very material in this case. You have
1600 the fact now in the record that the volume of this traffic was very large and that the earnings are of very great importance to this company.

Mr. Mayer: And also the great advantage to the company of getting it in the volume——

Commissioner Prouty: Yes, coal and oranges are transported under such dissimilar conditions that there is no very great value to the comparison.

Mr. Mayer: I thought so myself.

Mr. Peabody: One is a short haul and the other a long haul.

Mr. Norton: While it is immaterial, as I view it, I would like to ask the average distance coal is hauled?

Commissioner Prouty: When he gives us the rate per ton per mile that nearly answers it.

Mr. Peabody: The average distance bituminous coal is hauled is 242 miles.

Mr. Norton: And the average distance of citrus fruit?

Mr. Peabody: 1983 miles.

Mr. Norton: And coal loads heavier per ton mile than citrus fruit, does it not?

Mr. Peabody: Coal loads 30.8 tons, and citrus fruit 13.71 tons.

1601 Commissioner Prouty: Could you give your earnings per car mile on oranges?

Mr. Peabody: It is in the evidence.

Mr. Mayer: Can you tell us how much, Mr. Peabody?

Mr. Peabody: I can figure it right here if you want it.

Commissioner Prouty: No.

Mr. Mayer: Can you tell me how many carloads of apples your company hauled from California to Chicago or eastern points for the year ending June 30th, 1909?

Mr. Peabody: I don't think we hauled a car.

Mr. Mayer: Don't you haul apples from California?

Mr. Peabody: Not of any consequence. We did not haul 10 cars, I will say that, and I don't think we hauled a car.

Mr. Mayer: Who does haul them?

Mr. Peabody: I don't know. We don't.

Mr. Norton: They come from Northern California and probably come over the Northern roads, as it is more direct and a cooler country and all that.

Mr. Mayer: In view of what your Honor has said on the coal traffic, it is entirely immaterial whether he does or does not furnish the statement. I am saying that so there will be no misunderstanding between us in the future.

Mr. Peabody: Do you still wish it?

1602 Commissioner Prouty: No, I do not care for it.

Mr. Mayer: As this citrus fruit comes east, a good deal of it is diverted at Kansas City, is it not?

Mr. Peabody: At various points, yes.

Mr. Mayer: Kansas City is a point at which there is a particularly large amount of it diverted?

Mr. Peabody: Quite a large amount diverted at Kansas City.

Mr. Mayer: This diversion, I suppose, accounts for the diminution in quantity as the train comes to Chicago.

Mr. Peabody: Diversions, and left for consumption, and also there are some trains, of course, on the eastern lines, or a larger number of trains, I think, generally speaking, on the eastern lines.

Mr. Mayer: What do you mean by a larger number of trains on eastern lines?

Mr. Peabody: On our eastern divisions.

Commissioner Prouty: The trains would be a good deal more numerous between Kansas City and Chicago than between San Bernardino and Kansas City.

Mr. Mayer: Does that statement of your Honor's also imply that the trains are not so long or so many cars?

1603 Commissioner Prouty: The trains would be longer, would they not.

Mr. Peabody: No, they are shorter here; the trains on the western end are fully as long as we have and there is heavier power to take care of them.

Mr. Mayer: The consist will show that too.

Mr. Peabody: Yes, sir, it is all shown here.

Mr. Mayer: I do not need to ask anything that would be shown on that.

Commissioner Prouty: I see 63 cars on one of your eastern divisions here, and 57 on another one.

Mr. Peabody: Well, 63 cars, with 46 empties and 17 loaded with freight.

Commissioner Prouty: Yes, they include a good many empties.

Mr. Mayer: Speaking in a general way as to the movement of citrus fruit and other freight from San Bernardino east, many of these trains seem to be mixed, a number of cars of citrus fruit and a number of cars of other merchandise and empties?

Mr. Peabody: Yes, sir.

Mr. Mayer: Is there any rule about how those trains are made up?

1604 Mr. Peabody: They are made up at the convenience of the Yardmaster and the Train Despatcher. Sometimes the weather has a good deal to do with it; that is, if the rails are slippery

they will not be as heavy as when the rails are dry, and if the Train Despatcher has a certain number of cars to send out he may divide his total number of cars into two trains, both of which would be smaller than the usual train, or if only part of his power is in good condition and some is in poorer condition he would give a heavier load to the good power and a smaller load to the lighter power. It is left to the Yardmaster and Train Despatcher as to the makeup of the trains.

Mr. Mayer: He is the Czar on that point?

Mr. Peabody: Yes, sir.

Commissioner Prouty: If you go into any of your yards east of Argentine, or I suppose at Argentine, there is a good deal of switching?

Mr. Peabody: Yes, sir.

Commissioner Prouty: Switching in and out of cars and pulling cars here and there?

Mr. Peabody: Yes, sir.

Commissioner Prouty: Is that so of your yards west of——

1605 Mr. Peabody: Yes, sir, that is so of every large division point. They cut out the cars for various reasons, one reason or another. And I have stood at those division points and tried to fathom why in some instances they would cut out cars at the head of the train and others at the rear. Sometimes when they were making up a train going east on the next division they would hook up with the caboose and take three or four or five cars with it; you know the caboose stops at the terminal point and does not go through; and then at other times I have seen the switch engine come and take the cars off the head end of the train and set in other cars. It may be possible that they have cars at the station which are left over, and they take off cars that are on the train for the purpose of giving cars that are laid over quicker service, that is cars which have been left over a day or two, they will take them along to avoid damage and all those things. There are dozens of conditions which tend to make a train out of a division point very different from a train that comes in.

Mr. Mayer: This description which you have given of making up trains, cutting out and adding to, is a matter that is determined at each one of these divisional points by the Yardmaster; is that right?

1606 Mr. Peabody: The Yardmaster and Train Despatcher. Of course there are general instructions. The general instructions are on the Red Ball car. You will understand the Red Ball car has a card on the side with a round red ball on it, and the general instructions are that those cars are not to be delayed and if anything is to be set out it should not be those cars. If however they have to set out cars and there is not anything but Red Ball cars in the train, Red Ball cars have to be set out.

Mr. Mayer: Mr. Strohn I think told us that all the through trans-continental movement over your line from San Bernardino to Chicago and east is moved on the Red Ball service.

Mr. Peabody: From Chicago west, you mean?

Mr. Mayer: No, from San Bernardino to Chicago and east. Was he right in making that statement?

Mr. Peabody: Yes, as a rule that is eastbound. I think that is always the case; I think always both west and east merchandise of the transcontinental business goes Red Ball.

Mr. Mayer: And this citrus fruit goes Red Ball, is that right, the same kind of a car?

Mr. Peabody: I do not recall seeing a Red Ball card on a citrus fruit car. That does not need designation, it designates itself.

1607 Mr. Mayer: Let me ask you, the Yardmaster and the Train Despatcher at each one of the divisional points, including also the initial point, San Bernardino, are the kings who determine what shall go in each train; have I got that right?

Mr. Peabody: Under certain instructions, of course. The Division Superintendent gives them their instructions as to what shall be done, but they have the authority to come and go as the necessities require.

Mr. Mayer: One or two questions will illustrate what I mean. On your consist your first item is dated March 1st. That means 1910, as I understand?

Mr. Peabody: Is that eastbound?

Mr. Mayer: Yes, sheet No. 1. Have you it?

Mr. Peabody: Yes, sir.

Mr. Mayer: Now that shows that on that day two trains left San Bernardino, one of which had 45 cars, of which 21 were citrus, 23 other freight and one empty, and the other train had 60 cars of which 40 were citrus, 5 other freight and 15 empties.

Mr. Peabody: Right.

Mr. Mayer: Now the distribution of these citrus cars, empty cars and other freight, was determined and controlled by

1608 the Yardmaster and Train Despatcher, as I understand it, speaking generally, as the business is conducted?

Mr. Peabody: I can give you probably the exact history of a thing of that sort.

Mr. Mayer: Have I got it right or wrong.

Mr. Peabody: Not exactly. The Train Despatcher knows how many cars are coming in from these various loading points each night, and when they come in some come in earlier and some later; and the 21 cars were ready to go before the 40 were, otherwise——

Mr. Mayer: But he would know they were coming in?

Mr. Peabody: He would know they were coming in, otherwise the 40 would probably be put on the first train; but he got 21, knowing the 40 would come, and knowing he could take care of it, he sends out a train of 45 cars, with 23 other loads, and sends 40 out with 5 other loads. You will see they are both No. 34, first and second 34.

Mr. Mayer: Just one step further. Let us go to the division between Barstow and Needles, and under date of March 1st, 1910, you probably will find some of those citrus cars that left San Bernardino the same day, won't you?

Mr. Peabody: I can tell in a moment, the numbers are
1609 all there—no, the car numbers are not there.

Mr. Mayer: So you cannot tell?

Mr. Peabody: I cannot tell from this whether the same cars are in there or not.

Mr. Mayer: You cannot follow the movement of a car from anything you have produced here?

Mr. Peabody: I cannot follow the movement of a car from anything I have produced here, but you can from those (indicating two large bundles of papers).

Mr. Mayer: You are now pointing to several bundles, several cubic feet in each.

Mr. Peabody: Yes, sir, everyone of these reports go into these figures.

Mr. Norton: You are pointing to your wheel reports.

Mr. Peabody: I am pointing to our wheel reports.

Mr. Mayer: When these trains get to Barstow, the Train Despatcher and the Yardmaster determine just how those trains shall leave that point.

Mr. Peabody: They direct the exact makeup of the train.

Mr. Mayer: And the controlling point is to get the citrus fruit and the other Red Ball service merchandise moved out from point to point as quickly as possible plus such empties as require
1610 what you call this expedited service; is that the situation?

Mr. Peabody: That is the idea.

Mr. Mayer: That is all.

Mr. Norton: One question is suggested. I forgot to ask Mr. Strohn. Inquiry was made of Mr. Strohn as to whether a solid trainload of citrus fruit on the division from San Bernardino to Barstow would proceed right on *threw* Barstow. I will ask you whether that train might not at Barstow meet the fruit cars or other cars loaded coming from the north from San Francisco and elsewhere, and that train be mingled with these other cars and two small trains result?

Mr. Peabody: Barstow is the division point with the Frisco Line and Valley Line and it is where all the cars come in and are collected and dispatched in trains, both from Southern California Division and from the Valley Division, and they are handled at the convenience of the officials.

Mr. Norton: As I understand your last testimony it is that where there is a small number of citrus cars, not enough to make up a train, they are hustled out ahead by the operating department.

Mr. Peabody: Oh, yes, the time shows, the consist shows
1611 that those trains where they have two or three or four or five cars of citrus fruit run faster than those trains which do not.

Mr. Norton: Do you want to say anything of your own volition aside from what Mr. Mayer and I have asked you concerning?

Mr. Peabody: I think not.

Commissioner Prouty: That seems to be all.

(Witness excused.)

Mr. Norton: If Mr. Mayer does not introduce it, I want to introduce while Mr. Peabody is here, the eastbound consist and westbound consist.

(The papers so offered in evidence and identified, were received in evidence and thereupon marked Defendants' Exhibits Nos. 54 and 55, received in evidence April 22nd, 1910, and are attached hereto.)

Mr. Norton: And the recapitulation of those two consists I would like to have introduced.

(The paper so offered and identified, was received in evidence and thereupon Defendants' Exhibit No. 56, received in evidence April 22nd, 1910, and is attached hereto.)

1612 Mr. Norton: Now in addition to those, I think the Commissioner in his letter asked for the revenue in cents, subdividing as to the gross receipts, expenses and net earnings, showing the average earnings per car mile of all cars and of loaded cars and of revenue cars and loaded revenue cars, and also the average earnings on lemons per car mile loaded and on oranges per car mile loaded.

Mr. Peabody: He did not ask for the details, but asked it for the cars in a general way, and I have prepared this statement.

Mr. Norton: I offer that in evidence.

(The paper so offered and identified, was received in evidence and marked Defendants' Exhibit No. 57, received in evidence April 22nd, 1910, and is attached hereto.)

Mr. Mayer: You say the complainants called for that?

Mr. Peabody: Yes.

Mr. Norton: By the complainants and by Commissioner Prouty in his letter of March 9th, 1910.

There was also called for by the complainants and by Commissioner Prouty in his letter of March 9th, 1910, a statement showing the commercial ton miles, on the Santa Fe System, the percentage of carload freight not full car capacity, and the

1613 average load of commercial freight, carloads, tons, less than carloads, tons, all commercial freight, tons, and average haul commercial freight carloads and less than carloads in miles, which I now offer.

(The paper so offered and identified, was received in evidence and thereupon marked Defendants' Exhibit No. 58, received in evidence April 22nd, 1910, and is attached hereto.)

Mr. Norton: Also a statement for the Atchison, Topeka & Santa Fe Railroad System, showing transcontinental deciduous fruits and fresh vegetables handled during the year ending June 30th, 1909, asked for by the complainants.

(The paper so offered and identified, was received in evidence and thereupon marked Defendants' Exhibit No. 59, received in evidence April 22nd, 1910, and is attached hereto.)

Commissioner Prouty: These average earnings per car mile of lemons are the actual result of operations on your line?

Mr. Peabody: Yes, sir, those are the actual results of operation. Let me take that exhibit which refers to the average earnings per car mile. I want to explain on that statement Defendants' Exhibit No. 57, that in the average of earnings per car mile, the first four items there is a surplus between the gross receipts and
1614 expenses and on the oranges and lemons a deficit. That is the signs plus and minus are inserted to show there is a surplus on the four upper ones and a deficit on the two lower ones.

Mr. Mayer: Referring to Defendants' Exhibit No. 57, the first line shows average earnings per car and mile, all cars, gross receipts 10.83; that is 10 cents and 83 hundredths.

Mr. Peabody: Yes, sir.

Mr. Mayer: What do you mean by that, the average earnings per car mile on all freight handled?

Mr. Peabody: That is our average earnings on all freight divided by our total number of cars handled, empties, loads, and everything else.

Mr. Mayer: And the next, gross receipts of 15.30 on loaded cars; that has reference to all freight?

Mr. Peabody: That is the same amount divided by the number of loaded cars.

Mr. Mayer: And the next, revenue cars, 12.48?

Mr. Peabody: That is the same amount divided by the number of revenue cars, total, loaded and empty.

Mr. Mayer: And the next, 17.

Mr. Peabody: It is loaded revenue cars.

1615 Mr. Mayer: Thus far you are speaking only of all freight?

Mr. Peabody: All freight.

Mr. Mayer: Now your second column from the left is headed expenses, is it not?

Mr. Peabody: Yes, sir.

Mr. Mayer: Now you have on the first line of expenses 8.55, in handling all cars.

Mr. Peabody: That is our freight operation expense divided by the total mileage of the cars handled.

Mr. Mayer: Let me see if I understand that. You have taken the total car mileage of all your cars.

Mr. Peabody: I have taken the total car mileage of all our cars.

Mr. Mayer: And the total expenses——

Mr. Peabody: Including our operating expenses, taxes and interest charges.

Mr. Mayer: And divided that sum of money by your mileage?

Mr. Peabody: Yes, the same as I divided the receipts by that same mileage.

Mr. Mayer: In other words what have you done about the passenger expenses?

Mr. Peabody: That has been taken up——

Commissioner Prouty: Mr. Peabody has introduced a
1616 statement at Los Angeles in which this is all worked out in detail.

Mr. Peabody: Yes, sir. Well, this was the question covered in your letter and I answered it in detail that way.

Commissioner Prouty: The whole thing is worked out in detail, and he shows exactly how he arrived at these figures and his testimony shows exactly the method he employed.

Mr. Mayer: In view of that, this examination is surplusage, I take it?

Commissioner Prouty: Yes, and I do not see that these statements add anything to what you have already testified.

Mr. Peabody: None at all, only I gave them because you called for them.

Mr. Mayer: In figuring up your expenses on Exhibit 57, you have used the same method?

Mr. Peabody: Yes, sir, it is our regular method on which we base all our operating expenses.

Mr. Mayer: How do you determine what percentage shall be charged to freight and passenger?

Commissioner Prouty: He has gone into that already in his testimony.

Mr. Mayer: I withdrew the question. I have not read the testimony yet.

1617 Commissioner Prouty: I think you did in this case. I know you did in the cattle case.

Mr. Peabody: I did in the cattle case and did in the other cases, but I doubt if I have gone into details in this case, but the Commission is familiar with it.

Commissioner Prouty: Yes, the Commission is familiar with it. We had it in the cattle case.

Mr. Mayer: There are one or two documents to be introduced, and Mr. Matthews has the documents and will introduce them.

Mr. Matthews: We file for reference the contract between the Santa Fe Refrigerator Despatch Company and the Santa Fe Railway Company. For some reason it was not produced when we were in California.

(The paper so offered and identified, was received in evidence and thereupon marked Complainants' Exhibit No. 66, received in evidence April 22nd, 1910, and is attached hereto.)

Mr. Mayer: There are one or two questions I want to ask Mr. Peabody that I am not sure are in the record. The Santa Fe Refrigerator Despatch is a corporation?

Mr. Peabody: Yes, sir.

Mr. Mayer: With $5,000 capital stock?

1618 Mr. Peabody: I don't know. I have no connection with the Refrigerator Despatch whatever.

Mr. Norton: That has all been explained in this record, I believe.

Commissioner Prouty: I think so.

Mr. Mayer: I know it was in the old case.

Commissioner Prouty: Was it not gone into at Los Angeles, and did not Mr. Leeds testify out there regarding it?

Mr. Matthews: It was admitted that the Santa Fe Railway Company controlled the Refrigerator Despatch Company.

Mr. Peabody: And I believe I furnished you a copy of the contract.

Mr. Matthews: And I have just put it in.

Mr. Mayer: Do you know who the officers of that Despatch Company are?

Mr. Peabody: No, I do not. It is owned by the Santa Fe Road.

Mr. Mayer: That is sufficient. That is all.

Commissioner Prouty: It was admitted that the Santa Fe owned that company and kept it separate for operating convenience.

Mr. Mayer: The position we are taking is that in this
1619 case it must be considered the same as the Santa Fe Railway Company, and I wanted to show there was a record basis for that position.

Mr. Matthews: In connection with the testimony of Mr. Edwards, reference was made to a list of the pre-cooled cars, showing the condition at destination, how much ice was in the bunkers, and so forth. That was not offered in evidence and I desire to offer that statement now.

(The paper so offered and identified, was received in evidence and thereupon marked Complainants' Exhibit No. 67, received in evidence April 22nd, 1910, and is attached hereto.)

I. S. REA, was called as a witness, and having been duly sworn, testified as follows:

Mr. Matthews: State your name and residence?

Mr. Rea: I. S. Rea, Blue Hill, Illinois.

Mr. Mayer: I may be able to shorten it. Mr. Matthews wants to put in the record certain specific car numbers, showing just when they left and arrived. That is a matter these railroads can check up very easily, and all they need to do is to notify us if our statement is correct.

1620 Mr. Norton: This statement does not show the initials of the cars.

Mr. Matthews: Yes, it shows how it is made up, the car number, and it reveals the time it arrived.

Mr. Mayer: Yes, here is the car number and initials shown. I just wanted to save time.

Commissioner Prouty: The statements may be filed, and the defendants may check up those statements and object to them if they find them wrong.

Mr. Mayer: All you need to do, if you find them wrong, is to send us a copy of your objections.

Mr. Matthews: We offer those two statements in evidence.

(The papers so offered and identified, were received in evidence and thereupon marked Complainants' Exhibits Nos. 68 and 69, received in evidence April 22nd, 1910, and are attached hereto.)

Commissioner Prouty: Is there anything further from the complainants?

Mr. Matthews: I think that is all.

Commissioner Prouty: Any more testimony to be introduced by the defendants?

Mr. Norton: I have one man I would like to put on for a
1621 moment, Mr. Smith.

R. C. SMITH, was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Norton: You are the agent of the Atchison, Topeka & Santa Fe Railroad Company in the City of New York?

Mr. Smith: Contracting Freight Agent.

Mr. Norton: And as such are you familiar with the importations of lemons into New York and the movement of imported lemons out of New York westbound?

Mr. Smith: I solicit that business; yes, sir.

Mr. Norton: And with the movement of California lemons into New York?

Mr. Smith: I see quite a good bit of that, coming in contact with the receivers.

Mr. Norton: Have you examined the records of the New York Fruit Exchange, I believe it is called?

Mr. Smith: I have.

Mr. Norton: To tell how many boxes of lemons were imported into New York in 1906 and 1907?

Mr. Smith: Yes, sir.

1622 Mr. Norton: 1907-8?

Mr. Smith: Yes, sir.

Mr. Norton: And 1908-9?

Mr. Smith: Yes, sir.

Mr. Norton: And also the number that were received from California?

Mr. Smith: I have.

Mr. Norton (handing paper): Is this the statement that you have——

Mr. Mayer: Is not that in the record already?

Mr. Norton: I was afraid not. This shows the result of your examination.

Mr. Smith: Yes, sir, it does.

Mr. Norton: I will read this into the record. The imports were:

For 1906-7	1,944,900	boxes.
For 1907-8	1,823,600	boxes.
For 1908-9	1,647,525	boxes.

During the same seasons there were brought into New York California lemons amounting to:

1907	47,846	boxes.
1908	73,472	boxes.
1909	111,071	boxes.

1623 Commissioner Prouty: Have you any opinion as to the relative quantity of California lemons and foreign lemons which are consumed in New York?

Mr. Smith: No.

Commissioner Prouty: I suppose these foreign imports into New York were to a considerable extent shipped out of New York?

Mr. Smith: A great many of them are, yes, sir.

Commissioner Prouty: Is that also true to an extent of the California lemons?

Mr. Smith: Very slightly; if they are shipped out it is to close by points.

Mr. Norton: How long have you been in New York?

Mr. Smith: I have been with the Santa Fe for seven years this coming May, I believe.

Mr. Norton: Do you know during your experience there whether the California lemon business has been increasing in favor among the consumers?

Mr. Smith: I know from what I hear through the trade that it is.

Mr. Norton: Do you know whether the California lemon is put up in a more attractive way than the Italian lemon?

Mr. Smith: It is packed in such a way that it is more re-
1624 liable than the import lemon.

Mr. Norton: What do you mean by that?

Mr. Smith: I mean that if a box of lemons is supposed to contain 300 lemons of a certain grade, you can depend that there will be that grade in there and that number, of a uniform box, the year round.

Mr. Mayer: In the American lemon?

Mr. Smith: Yes.

Mr. Mayer: And not so with the Sicilian lemon?

Mr. Smith: In the Sicilian lemon, say take the 300 brand of a certain grade, of a certain box at a certain time of the year, later on it will be put up 300 lemons, and there will be a smaller lemon and in a smaller box.

Mr. Norton: But the American lemon package is what it purports to be?

Mr. Smith: It is; it has that reputation through the trade.

Mr. Norton: And our California friends handle their fruit better?

Mr. Smith: They have the reputation in New York for that, yes, sir.

Mr. Norton: Have you made any inquiry among the best
1625 consumers in New York as to their preference between California lemons and Italian lemons?

Mr. Smith: Yes, sir.

Mr. Norton: What is that preference?

Mr. Mayer: I do not think it would do the complainants any good to object to this.

Commissioner Prouty: It appears already, I think, that the American lemons sell for, I don't know how much more per box in New York than the foreign lemons.

Mr. Norton: What is the preference, state it?

Mr. Smith: As I find through the business, the best class of trade in New York, they prefer the California lemon, the best lemon.

Mr. Norton: They are used in the best hotels and restaurants in New York?

Mr. Smith: What is considered to be the best grade?

Mr. Norton: Do you know what better price the first grade lemon of California commands over the first grade Italian lemon?

Mr. Smith: Well, I am told that the fancy grade, best grade of California, compared with the best grade of Sicily, both being in good condition, the receivers in New York expect to get at
1626 least 50 cents a box more for the California lemons.

Mr. Norton: Did I ask you whether the California lemon stands up better, as the expression is, than it used to?

Mr. Smith: It is considered, I believe, that it does, on account of refrigeration.

Mr. Norton: On account of what?

Mr. Smith: Better refrigeration?

Mr. Matthews: This statement you have referred to, what months of the year does that commence with, July or November?

Mr. Smith: Do you mean on the receipts?

Mr. Matthews: Yes.

Mr. Smith: It commences with November 1st and runs through the year.

Mr. Matthews: Both as to imports and California shipments?

Mr. Smith: Yes, sir.

Mr. Matthews: Where did you get the information as to the imports?

Mr. Smith: I got it from the New York Fruit Exchange.

Mr. Matthews: And the same source as to the California shipments?

Mr. Smith: Yes, sir.

Mr. Matthews: Is it not a fact that 1907 and 1908 were
1627 two exceptional years in the California lemon business?

Mr. Smith: Well, I don't know as I am sufficiently well posted on that to answer.

Mr. Matthews: You don't know anything about that?

Mr. Smith: I could not say that I do.

Mr. Matthews: Do you know anything about the quality of the lemons that are being imported now from Italy, to know whether it is improving or getting worse, or what?

Mr. Smith: I do not know that there is any particular difference.

Mr. Matthews: Do you know anything about it?

Mr. Smith: Not from a professional standpoint, as you might say.

Mr. Matthews: Have you made any investigations or inquiries on that subject?

Mr. Smith: I cannot say that I have.

Commissioner Prouty: Do you solicit the importation of foreign lemons?

Mr. Smith: Yes, sir.

Commissioner Prouty: To what points?

Mr. Smith: Texas business and the other side of the river, Kansas business and Kansas City.

1628 Mr. Mayer: What river?

Commissioner Prouty: The other side of the Missouri River. Do you obtain any considerable amount of that business?

Mr. Smith: The Santa Fe handles some of it.

Commissioner Prouty: Take it all in all, is there much of it handled?

Mr. Smith: There is a good deal of it handled at certain seasons of the year, yes, sir.

Mr. Mayer: Do you handle at your eastern end more California lemons or more imported lemons?

Mr. Smith: I could not say positively, but I should suppose there would be more of the Californias—do you mean coming into New York than go out, is that your idea?

Mr. Mayer: Going out of New York.

Mr. Smith: I should say that the Santa Fe would handle more into New York than they did out.

Mr. Mayer: That means in plain English, you handle more California lemons than you do imported lemons, does it?

Mr. Smith: I should say so, yes, sir. That is due to the west that California supplies the west and the imports cannot get there.

Mr. Mayer: Do you know anything about the competition
1629 in New York City between the California lemon and the imported lemon?

Mr. Smith: Except that it is generally pretty keen.

Mr. Mayer: It is very keen, is it?

Mr. Smith: Yes, sir.

Mr. Matthews: Do you know what fixes the price in the New York market on lemons?

Mr. Smith: No.

Mr. Mayer: Don't you know it is a fact that the Italian lemon fixes the price?

Mr. Smith: No.

Mr. Matthews: You don't know that?

Mr. Smith: No.

Mr. Matthews: Don't you know that it is a fact that the Italian or the whole lemon industry down there is in the hands of Italians, the import business?

Mr. Smith: Certainly, they are the principal ones that handle it.

Mr. Matthews: They do all they can for the sale of that product?

Mr. Smith: Naturally; their bread and butter depends upon it.

1630 Mr. Norton: This Fruit Exchange deals with both foreign and domestic lemons?

Mr. Smith: Yes, sir.

Mr. Norton: Impartially?

Mr. Smith: Yes, sir.

Mr. Norton: And you made up your data from the weekly reports of that Exchange, or the monthly reports?

Mr. Smith: The monthly statements I made that out from.

Mr. Norton: I don't know whether I understand clearly your answer to Mr. Mayer's question, or his question, but I understand this, that—well, I don't know what I did understand. The Santa Fe does not run into New York. He asked a question about whether the Santa Fe took more California lemons into New York than it takes out, as I understand.

Mr. Smith: Yes.

Mr. Norton: Of course you solicit business in New York to go over the Santa Fe westbound when it gets to Chicago?

Mr. Smith: Yes, sir.

Mr. Norton: And you know nothing about business coming into New York that left the Santa Fe rails at Chicago, do you?

Mr. Smith: Except what I see on the Postal Cards which we receive from the west showing these cars coming to New York.

1631 Mr. Norton: You get a report of every car that is destined to New York?

Mr. Smith: We are supposed to.

Mr. Norton: That ever moved on the Santa Fe rails?

Mr. Smith: We are supposed to.

Mr. Norton: And there are more cars coming from the Santa Fe rails into New York than there are of imported fruit going out of New York?

Mr. Smith: That the Santa Fe handles after they get them, when they reach their rails.

Commissioner Prouty: I understood him to say, and understood him originally to say that he thinks the Santa Fe handles more California lemons which go to New York than it handles Sicilian lemons which come from New York.

Mr. Mayer: That is what I had in mind and I so understood him. Now what are your duties there, to solicit traffic?

Mr. Smith: Yes, sir.

Mr. Mayer: And you are in competition with other roads between Chicago and New York, are you not?

Mr. Smith: Repeat that.

(Question repeated.)

Mr. Mayer: You are competing with other men who are

1632 soliciting business from Chicago west?

Mr. Smith: From Chicago west, yes, sir.

Mr. Mayer: Our there in California where this citrus fruit originates, they do not have any solicitors or men engaged in your line of business, do they?

Mr. Smith: Plenty of them.

Mr. Mayer: Do they solicit citrus fruit shipments?

Mr. Smith: I could not say. I do not solicit in California.

Mr. Norton: They are all over the United States?

Mr. Mayer: You have overlooked us, although we give you fifteen millions a year.

Mr. Matthews: Do you know anything about the foreign lemons for the months of January, February and March of this year?

Mr. Smith: No, I have not that data.

Mr. Matthews: Would you be surprised to learn they are the largest movement of any year within the last five years?

Mr. Smith: I would decidedly. I can easily get that.

Mr. Matthews: We ask leave to refer to the reports of the Department of Commerce and Labor, which show that.

Commissioner Prouty: The Customs reports of the Treasury Department reports will show that.

1633 Mr. Dillard: Were you speaking now of the imports into New York City?

Mr. Matthews: Yes, they show 8,000,000 pounds, the largest importation, more than double January of the year before.

Mr. Norton: Will you show also whether the movement from California was not also unusually large?

Mr. Mayer: Yes, there is no objection. You know exactly how many cars you are shipping. We cannot take anything out of California unless you three carriers take it out.

(Discussion.)

Commissioner Prouty: Have you any further testimony, gentlemen?

Mr. Norton: There is a message here from Mr. Leeds, and Mr. Peabody thinks perhaps he does not understand the situation. Mr. Leeds says: "The Commission's inspectors are here ready to start their investigation on Sunday the 24th. Their instructions contemplates only obtaining information as to quantity of ice placed in cars at point of origin and re-icing stations up to and including Argentine. This is certainly not sufficient to properly reflect quality of our service. If Commission desires full information as to handling citrus fruit crop in California, it should contem-
1634 plate entire history of service from point of origin to destination and delivery to consignee on all roads and at all destinations. I believe you should ask Commissioner Prouty not to obtain information which will only partly cover the ground. Report based on that would certainly not be fair. Inspectors' instructions contemplate closing inspection with month of June. It should be extended over July, as July and August are heaviest refrigeration months as to quantity of ice used per car." I wrote you about that—

Commissioner Prouty: As I said, we would consider the July proposition after we get through with June, but it seems to me if we know the history of the icing from San Bernardino to and including Argentine, we have all we need in order to form an opinion. Or course we understand that ice is put in the cars beyond Argentine, but we already know something about that, and if we know how much ice has been put in that car when it leaves Argentine for Chicago, we have all we need.

Mr. Peabody: If your inspectors are instructed to take note of all items covered in that blank, that is all that is necessary.

Commissioner Prouty: I have written to our man having in charge that matter, and told him to cover everything in that blank.

1635 Mr. Peabody: That is satisfactory.

Mr. Mayer: Do the shippers know what blank these gentlemen are talking about?

Commissioner Prouty: I wrote to your firm and also to Mr. Call enclosing a copy of that blank.

Mr. Mayer: You need not take this, but I do not pretend to be familiar with this record——

Mr. Dillard: I have another Macedonian cry from California

wanting to know if there is any possible hope of postponing the argument.

Commissioner Prouty: I do not think so. It will have to be argued on the 11th, or if not then, not until fall, and we feel the rate part of this case should be disposed of this spring.

Mr. Mayer: May I inquire whether it is intended to devote an entire day to the argument of this case?

Commissioner Prouty: The entire day has been assigned for the argument of this case.

Mr. Mayer: At ten o'clock?

Commissioner Prouty: We begin at 11:00 o'clock now; that would mean about five hours, however.

After some further formal discussion the hearing was closed.

a Interstate Commerce Commission, Washington.

United States Commerce Court. Filed April 15, 1912. G. F. Snyder, Clerk.

I, John H. Marble, Secretary of the Interstate Commerce Commission, do hereby certify that the paper hereto attached is a true copy of the original transcript of the stenographer's notes of that portion of the oral argument taken before said Commission on May 11, 1910, at Washington, D. C., in the case of Arlington Heights Fruit Exchange and others against Southern Pacific Company and others, docket No. 3000, the original of which is now on file and of record in the office of this Commission.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this 15th day of April, 1912.

[Seal of Interstate Commerce Commission, 1887.]

JOHN H. MARBLE, *Secretary.*

b (*Arguments of Levy Mayer.*)

Stenographer's Minutes.

Before the Interstate Commerce Commission.

Docket No. 3000.

ARLINGTON HEIGHTS FRUIT EXCHANGE et al.
vs.
SOUTHERN PACIFIC COMPANY et al.

WASHINGTON, D. C., *May* 11, 1910.

1 Before the Interstate Commerce Commission.

Docket No. 3000.

ARLINGTON HEIGHTS FRUIT EXCHANGE et al.
vs.
SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al.

WASHINGTON, D. C.,
Wednesday, May 11, 1910—11 o'clock a. m.

Present: Commissioner Knapp (Chairman), Prouty, Cockrell, Lane, Clark and Harlan.

Appearances:

Messrs. Joseph H. Call, Asa F. Call, Levi Mayer, H. C. Bangs, and Francis E. Matthew, attorneys for complainants.

Mr. T. J. Norton, attorney for the Santa Fe System companies.

Messrs. F. C. Dillard and C. W. Durbrow, attorneys for Southern Pacific Company, Union Pacific Railroad Company, The Oregon Railroad & Navigation Company, Oregon Short Line Railroad Company, Northwestern Pacific Railroad Company, Galveston, Harrisburg & San Antonio Railway Company, Houston & Texas
2 Central Railway Company, Morgan's Louisiana & Texas Railroad & Steamship Company, Sunset Railway Company, Texas & New Orleans Railroad Company, El Paso & Northwestern Railway Company, El Paso & Northeastern Railroad Company, El Paso & Rock Island Railway Company, El Paso & Southwestern Railroad Company of Texas, El Paso & Southwestern Railroad Company, Louisiana Western Railroad Company, Denver & Rio Grande Railroad Company and San Pedro, Los Angeles & Salt Lake Railroad Company.

Mr. S. A. Lynde, attorney for Chicago & Northwestern Railway Company.

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4 *Argument:*

The Chairman: Case No. 3000, Arlington Heights Fruit Exchange et al. vs. Southern Pacific Company et al. Is that case ready for argument?

Mr. Durbrow: I would like to hand to the Commission and Counsel a statement called for by Commissioner Prouty at the hearing, showing the car mileage on the Pacific Fruit Express for the years 1908 and 1909, showing the revenue earned by the Pacific Fruit Express or the car mileage earnings for that period in the citrus fruit traffic.

The reason this statement has not been furnished before this is because it involved a great deal of labor. I will hand a copy to the Commission and to counsel.

If the Commission please, I wish to call attention to page 43 of Defendants' Brief. There is a statement in there with reference to the winter relief rate which should not have found its way into the brief. It was information given to me by Mr. Chambers at Los Angeles, and which I assumed was in the record.

Commissioner Prouty: Your brief does not seem to be here.

Mr. Durbrow: It should be here. The briefs were mailed on Wednesday last, exactly one week after the day that I re-
5 ceived the proof copy of the complainants' briefs.

Mr. Mayer: Which brief are you correcting?

Mr. Durbrow: The Southern Pacific Brief.

The Chairman: We understand an application was made in due season.

Mr. J. H. Call: I think there was some irregularity about filing the brief, for which nobody desires to take any advantage. They are all on file.

The Chairman: They may be filed.

Mr. Durbrow: I mailed our brief, as I stated, a week ago today.

Mr. Norton: While we are speaking about briefs——

The Chairman: Yours may be filed.

Mr. Norton: But there is another point. I should like to make a motion in relation to something contained in the brief for complainants. Several years ago when it became apparent to our company that this sort of litigation was going to be long and difficult, it was concluded that both in our service and outside of it, and elsewhere, a great deal of guessing was being done as to what was what in railroad affairs. We therefore established a bureau of statistic and put Mr. Peabody in charge of it. He has had since that
6 time absolute liberty to do as he pleased, to spend what money he might choose to spend in the collection of information, so that we might know our own business not only for ourselves but for this Commission. Mr. Peabody has a large force which is in daily receipt of facts and figures respecting the operation of our system, and he is the only man who can answer questions about our affairs—that is, answer them accurately or as nearly accurately as it is possible to make answer. He is permitted to call upon anybody directly, from the vice-presidents down, to procure and deliver information, to secure information and make reports to him. As I remarked before, he is absolutely without let or hindrance in the prosecution of this business.

We believe he has accomplished great results in that direction and there are other railway companies in the United States who agree with us in that opinion. It is therefore our practice, when any information is asked for—for example about the number of carloads of corn that we took out of Kansas last year—we would ask Mr. Peabody to tell us. He has the information. No operating man in Kansas can tell us; he has not got it.

That explains why we have used him and why our department is as it is. This is well known to the Commission, I think.
7 For that reason I want stricken out, and I move that there be stricken from the briefs of complainants in this case, the following at page 19 of their "Brief and Argument on Behalf of Complainants."

"For instance, the statistician of the Santa Fe, who is in effect an expert witness, hired on such a salary as to be willing to swear to statements that the managing officers would feel stultified in themselves making, justifies the rates complained of by a set of figures based upon that railway company's being entitled to earn a revenue on the tonnage contained in its own equipment, and charged to the commodity the weight of the car, and also the weight of the returning empty."

The statement of fact is erroneous as well as insulting to Mr. Peabody, and I think it should be stricken out of the brief.

Mr. A. F. Call: I do not suppose the language used is very material to the real inquiry, but as I am the author of the language I desire to say that I felt then and I feel now that the language is justified. We furnish 40,000 cars of citrus fruit, and we pay in the way of freight and charges $14,000,000 a year to the railroads, freight and charges. We pay the highest rate of any product that moves from the coast; and this man got up and swore before
8 the Commissioners out there that they are carrying that business at a loss. If that does not justify the language there is nothing on earth that will.

Mr. Norton: Begging your pardon, he did not swear to that.

Mr. A. F. Call: Well, the figures show that.

Mr. Norton: He said the traffic did not pay what it should pay. We insist upon that now. On a movement of lemons to Buffalo, New York, he showed it did not pay the cost of carriage.

Mr. Mayer: I would suggest that perhaps the motion had better be made after the arguments have been heard. Possibly you might not then feel like pressing that motion. There will be considerable argument submitted upon the testimony of Mr. Peabody, and in view of what the record shows his testimony to have been I believe the language is hardly sufficiently strong to characterize it.

The Chairman: It is not necessary to spend further time in considering the matter.

What counsel desire to be heard for complainants?

Mr. A. F. Call: I would like to make the opening statement. My name is A. F. Call. My brother, Joseph H. Call, would like to follow me briefly; and we would prefer to have Mr. Mayer
8½ close the case for us.

The Chairman: What counsel desire to be heard for the carriers?

Mr. Norton: Mr. Durbrow and I have agreed that I shall open with a statement of our case and that he will close for the carriers.

Mr. Mayer: May I inquire how much time we will have?

The Chairman: We shall allow substantially the day, at least four hours for the case, two hours on a side, and counsel on each side may divide that time between themselves as they may agree, counsel for complainants reserving so much of their time as they may see fit for reply.

Mr. Norton: I understood the day was a five-hour day.

The Chairman: It may be a little more than four hours. We will allow the day and divide the time as nearly equally as we can. Mr. Call, you may proceed.

Argument of Mr. Asa F. Call on Behalf of the Complainants.

Mr. A. S. Call: May it please the Commission, the growers, producers and shippers of citrus fruit from California being no longer able to endure the conditions prevailing regarding the transportation of their product, and the charges in connection
9 with its transportation, have again appealed to the Commis-

sion for a readjustment of the equities between them and the carriers.

While this is the general ground of their complaint, it is subdivided under four heads or charges:

First, that the lemon rate recently established of $1.15 per hundred, that being advanced from $1 since last fall, is exorbitant and unreasonable; and that the orange rate of $1.15, which was put in force three years ago is unjustifiably high and unreasonable, these rates being what are known as blanket rates, or, as we sometimes call them, postage stamp rates, and extending from the producing points in California to nearly all parts of the United States; in fact, all parts of the United States east of Salt Lake excepting the territory covered by the Southeastern Traffic Association south of the Ohio and east of the Mississippi, and in which territory a local is added to the blanket rate.

I say we have again petitioned you for a readjustment of our equities, because this matter has been before this Commission in recent years, and action along the same lines having been commenced along in the year 1900 and ended with the final de-
10 cision about the fall of 1904; and during those four years testimony was taken and decisions made, to which we will refer more fully during the argument.

The petitioners in this case number 131 associations and exchanges, partnerships and individuals, comprising over 10,000 people who are owners and producers of orchards and shippers of citrus fruits to the markets of the country, and comprising over 90 per cent of all the citrus producers of California.

There appears in this case several features which I desire to refer to, which perhaps may not be controlling in themselves of this question, but which taken together seem to us present a situation which calls for a most complete investigation and a sifting of the facts of this case, in order that we might arrive at a just basis for this transportation charge, just to the producer and just to the carrier. And in this respect, I want to say that in this hearing our only desire is to arrive at a basis which will be reasonable for all. We never have taken the position—we do not now and never will take the position—that we want to deprive these carriers of a just return on their investment. We only take the position that we are entitled to live as well as they.

This citrus business has grown up in California during the
11 last quarter of a century to great proportions. It started with almost nothing twenty-five years ago, and has grown into a business now of 40,000 cars a year, of which 34,000 cars are oranges and 6,000 cars are lemons. California is adapted to the production of this fruit. We have lands that are adapted to no other purpose so far as we have yet ascertained; and for the proper development of the natural resources of the state it seems necessary to develop the business of growing citrus fruits. This citrus fruit has also become in recent years a table diet for almost every one. Our consumption is approaching that of the apple consumption. The consumption of oranges now in this country approximates 20,000,

000 boxes a year, and they are put upon the markets at less price in the last few years than apples by the bushel or by the peck. They are being generally consumed by the people, so that for the interests of the whole country as well as for the interests of California, it is desirable that the industry should continue and should be permitted to live.

It has been shown in this case that it requires from eight to ten years to produce these orchards and that it costs about $1,000 an acre to produce it. That is about the finding of the Commission in the last hearing. During this time the producer must work
12 and continue to work and continue to invest, continue to watch his groves without any return. In that this business differs from almost every other agricultural business in the country. It requires a longer time, a larger investment and more particular care to produce a citrus grove than almost any other fruit product; and greater expense and greater care than any other agricultural production. The investment grows into large proportions. In this case we have approximately 125,000 acres of citrus fruits that have cost these growers $125,000,000 to produce, and have required years and years of time, waiting and watching and working and investing, to get these groves into bearing condition. It is not like any other rate that you can think of, hardly, in this, that if this business cannot be maintained it is destruction of the property. If a merchant, jobber or dealer of any kind suffers an increase of rates, he can adjust himself to the new conditions very quickly; but with a grove of this character the loss is a permanent one; it cannot be remedied.

The proportion of this business to the whole business will perhaps appear more clear to you when I say that on the Santa Fe Road, which is the initial line for all this territory, we pay them about a sixteenth part of their total freight revenues. We pay to
13 the railroads, in rates and charges, about $14,000,000 a year based on last year's shipments, of which they get about $4,000,000 and their total freight revenues are about $64,000,000.

The evidence in this case shows that the citrus producers of California are producing this enormous amount of fruit; they are carrying this very large investment; they are doing all this work practically without compensation. The cost of production has increased in recent years without a sufficient corresponding increase in price, so that the profit to the grower is reduced to almost nothing. I think on the basis of last year's average sales, less than 1 per cent, with $125,000,000 producing nothing; with 10,000 men at work they are getting practically nothing, while on the other hand the initial lines, by reason of improved methods, by reason of having built up a great western empire which is their own, by reason of the decreasing cost of transportation and operation, in proportion to the business done, have earned last year approximately $116,000,000—just last year alone, a sufficient amount of money to build a railroad every year from Los Angeles to Chicago, a sufficient amount of money to supply the Government of the United States with a proper reserve.

Now, we are not complaining of these earnings; we are glad to see them; we are glad to know that they have them; we are glad to know that the western country is sufficiently prosperous so that they can earn it. We are not complaining of it in the least. But what we say is that their condition is such that they can afford to give us an honestly reasonable rate for the transportation of this product, and that is all we ask for. May it please the Commission, they cannot deny us this right by reason of poverty.

Now, in this case we are confronted with sharp differences of opinion between my brothers on the other side and ourselves, in regard to what each party is entitled on this hearing. These defendants openly, boldly and brazenly claim in their briefs, in their testimony, all through this case, that they are entitled to every single improvement that we have made in the business, every saving and economy that we have made, and everything that we have done to improve our products—that they are entitled to the benefit of it.

Mr. Norton: I never have claimed anything of the sort.

Mr. A. F. Call: It is claimed all through the briefs; it is claimed in your brief. Don't you say in your brief that you have proved by the testimony of Ed. Chambers that the lemon industry is not suffering now the amount of decay heretofore, due to our superior methods; and don't you say that in that respect we have corrected our business and gotten larger storehouses and therefore you are entitled to an increased rate.

Mr. Norton: Not therefore.

Mr. A. F. Call: Don't you say in your brief that we have a better-keeping lemon than we had before and therefore you are entitled to an increased rate because of our superior methods? Why don't you say that you are entitled to the benefit of the improvements we have made in the business?

In addition to that, they say they are entitled to every improvement and betterment that they have made in their service. That is something that they have invented, something that they have discovered. Therefore they are entitled to that, they are entitled to our improvements and to their improvements.

Not only that, but they openly say they are entitled to the additional protection which the Congress of the United States saw fit to extend to the lemon industry. Congress came to our rescue last year, as we showed to their satisfaction during a time when the whole United States was demanding the reduction of the tariff, we showed we could not live without a tariff that gave us an extra half cent, and now the railroads say they are entitled to that. If anything is left on God's green earth that they don't think they are entitled to, they have not named it in this case.

They not only say that, but they say they are entitled to 6 per cent upon their whole capitalization, although by their own report they show they have placed bonds on half of that valuation at a great deal less than 6 per cent. They say they are entitled to 6 per cent interest on stock and that they are entitled to bonds between the price at which they placed them and 6 per cent which they say they are entitled to earn. They are not only earning 6 per cent,

but 10 per cent, and they have earned more than they paid on that stock within the time since we planted our groves.

Mr. Norton: Is there anything in the testimony to prove that?

Mr. A. F. Call: It is a matter of public record and in the knowledge of every man that you have reorganized a part of these companies within the time when we planted these groves.

Mr. Norton: Counsel should be called upon to confine himself to the testimony and to such matters as are in the judicial knowledge of this Commission.

Mr. A. F. Call: If I am saying anything that is not true, I will beg your pardon. Now, I have realized this, that in presenting this case there are one or two features in it upon which the counsel have based an argument and are perhaps entitled to base an argument: One is that in spite of our small return that the industry has increased. Another is that for a long time we have paid this rate without bringing an action or persisting in bringing actions to reduce the rate, or without resorting to violence against the carriers; but we have stood under for a number of years and paid the rate, and that the business has grown. That to my mind is the only argument in the mouths of the defendants which is entitled to consideration and weight here in this hearing.

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But as to that I should say that the people of California have not yet discovered the industry which the railroads will allow them to pursue and show a profit without a raising of rates. If they will point out to us a single industry which we could go into on that coast and make it show a little profit, and they will guarantee not to raise the rates on that industry, I think they could induce a very large number of orange growers to quit the business. I venture to say there is not now and never has been an industry developed on the coast that showed a profit that did not show a raise in rates.

Many people move to the State of California for reasons which do not impel them to move to other sections of this country. There may be climatic conditions there favorable to old men and to frail men, and to men who wish to retire. And when men go to California for any of these reasons they must do something. A man cannot retire from active business and sit down and do nothing. He must do something. There is certainly something enticing and inviting to men who wish to retire from active business life and have not much strength to go on. There is something enticing about it, and many have gone into business for that reason. There is a long time before they can get any return from an orange grove. Many men are led on by hope, not only in this business but in others. It is also true there are many individuals in this business who have made a success in a financial way. We have lemon growers who have succeeded and we have orange growers who have made some money among this number. They see these groves and the men who have made a success; and it is but human; it is in the mind of man to think he can do as well as other men have done. That is what makes the progress of the world; that is what keeps us working. Not many of us would be at work if we could look into the future and see what is in store for us. It is the

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hope that we can succeed in years to come that keeps us going.
19 That is what built up the States of the United States, and that is what built up this industry. It is hope.

In considering this question which is of such great importance to the State of California and to these people we represent, I want to ask one thing, and that is you do not attach an undue presumption to the reasonableness of the charge that has been made during these years. I know that it comes to the mind of most men, we will just take this rate that has been here as a basis and consider whether it should be raised or lowered a trifle, taking that as a basis. But I ask you in considering this rate, not to assume anything but dive to the bottom of this question and eliminate the chaff; take out the false arguments and untruths, and get at the real facts in this case and give to each party what is absolutely right on the record and on the facts, and not on what has been done in the past.

They are not entitled to any presumptions from this rate. I know that the American public has been so thoroughly and persistently educated to the idea that railroad rates are sacred things, not to be touched by profane hands, that many people have come to believe it, and I know that railroad presidents and attorneys have invited themselves to the councils of the nation an- there confided to them the secrets that the matter of making rates was too
20 intricate a question for any public tribunal and that only skilled and expert rate makers, educated in the sanctum of the railroads themselves are able to deal with this intricate question. But when we are confronted by the facts in the case and are shown, as it is shown in this case, and probably in nearly every case that comes before this Honorable body, that these rate makers do not know anything about the very elements that enter into the making of the rate, they do not know the movement of trains, the cost of moving trains, or the cost of a shipment, they do not know how to make a comparison with other rates, and confessed so on the witness stand, even those of longest experience, they know nothing about these questions that move your mind to a conclusion; and yet that is the tribunal that the long suffering public would be put up to to decide these questions of rates, and the public would still be told that these questions were too intricate for the common mind.

When you come to solve this great mystery, you will find it is only a gauzy veil to conceal a grasping greed. And when you come to look at the great arithmetical proposition that confronts these rate makers and really see how it is done, you will find it is only a simple matter of additions to rates. You will find that the
21 only consideration that moves them is more revenue; that all this rate making is perfunctory and that when the command comes from the capital of the country that we must have an increase of rates, some poor devil of a rate maker will lose his job unless he can find some rate to raise; that is all there is to it. And so they are not entitled to this presumption of reasonableness.

And again, as to conditions. Conditions have changed since this last hearing. Conditions have changed sufficiently to destroy any presumption that might have existed. There is an increasing load,

a greatly increasing minimum load; commencing with 20,000 pounds in the beginning, or ten tons; now to about seventeen tons under their new collapsible bunker car of 34,000 pounds. They put 34,000 pounds in their new steel collapsible bunker car which will soon be in common vogue in the transportation of this business.

There has also been a great decrease in operating expenses, owing to the more powerful locomotive used, the heavier rails, the increasing tonnage, the longer trains, so that there is 1600 tons in a train instead of a third of that amount—all of which justifies a consideration.

Then there is the change in the condition of the railroads and of the industries. The railroads, for instance, started out a few
22 years ago in an insolvent condition, in the hands of receivers, either through bad management or want of business, I don't know what; but in a few years the great tide of immigration and of money going out to the west has developed an empire on the Pacific Coast and has transformed these little struggling roads that went across deserts, into great trans-continental traffic lines, doubled tracked nearly all the way, and which carry over their polished rails a business that is many times the volume of the business that was carried when this rate was made. These conditions justify a reconsideration of these rates, and reconsidering these rates we are not entitled to indulge in any presumptions.

Not only has the situation of the railroads changed during the last ten or fifteen years, but the situation of this industry has changed. It is not alone peculiar to this industry; it is peculiar to most industries in this country. The peculiarity is that costs have advanced with the inflation of gold, the circulating medium; prices have advanced; labor has advanced; material has advanced; ground has deteriorated. Now, you know with the virgin soil, no matter how strong it is, it will not stand cropping forever without some additional expense. You know that fact alone has given us the
23 abandoned farms in New England. It is now giving us the abandoned farms in some of these other eastern States, and has driven the tide of producers on to the Red River valley, to produce their wheat and grains simply because the soil has become depleted. That is so with the orange and the lemon crop, and they are in a condition which requires new fertilization. Accordingly the cost has increased for producing this fruit over what it was ten years ago or seven years ago—more than 50 per cent, and yet we are not getting any more money for that fruit.

I say to you, and what I say will bear the closest possible scrutiny, that we are producing about the only table product that is produced in these United States for the same money it was produced for ten years ago. You cannot name a product that you eat that is sold for the same money now that it was ten years ago, except oranges. That I know. That I have been able to discover by the most diligent inquiry. We are selling at the same price, and we are producing at a cost of 50 per cent more. That is the trouble with this situation. The testimony in a former case developed the fact and this Commission found that it cost 75 cents to raise and put on board a box of

oranges, without counting interest on the investment. The undisputed testimony in this case shows the cost is $1.37 at the
24 present time. So you can see from that record, that undisputed record, what the advance has been to us in the cost of production.

Now taking the testimony in this case, I want to say there has been pretty severe criticism in the briefs of counsel over the character of testimony that was produced at this hearing. I want to say that we tried the best we could to limit the volume of this testimony, which now runs into a pretty large record, and we did that partly on the recommendation of the Commission, I think a letter from Commissioner Prouty to me which said that one was as good as a large number of witnesses on a given question. So we tried to limit it, and boil it down, and get it into as concrete shape as we could. Therefore we did not produce the large number of witnesses that perhaps we otherwise would in a case of this importance. But we selected men that we thought even the railroads would agree were the fairest men that we could produce in California, who had the necessary and the requisite information. I think we were not mistaken in the selection, as I will call to your attention a little later.

On the cost of producing oranges and the conditions affecting the orange industry, we called Mr. H. B. Chase, of Riverside,
25 who owns 1500 acres of orange groves. He is our largest grower. It is not necessary for me to say, because others have said it in the record, that he is a man of unquestioned integrity and much information, absolutely fair in his disposition, judicial in his temperament, and not an advocate in any sense of the word or a partisan, a man I think that they would have called themselves, one who knows all about the subject and who gave to the subject several weeks of thorough preparation in addition to the knowledge he had before.

With regard to Mr. Chase, because I have a limited number of witnesses, I thought I would see what the other side felt about the character of our testimony. Mr. Chambers was on the witness stand. He is the rate maker for the Santa Fe Road, and one of the ablest men on the coast, a man we all respect on the Pacific Coast, a man of very large intelligence and a big-brained man. When he was on the witness stand I asked him about this witness, Mr. Chase. I asked him about this matter and he said, "I do not think I would doubt anything Mr. Chase stated." Then I asked him this question:

"When he told you he had investigated this thing all over California, and arrived at the cost of production, you would think it was approximately correct, would you not?

"Mr. Chambers: I should think so yes.

26 "Mr. Call: And you would feel the same in regard to Mr. Hampton's statement, would you not?

"Mr. Chambers: I should think Mr. Hampton is a pretty fair man. I do not know him as well as I do Mr. Chase.

"I would not doubt Mr. Woodford's figures, as to what he actu-

ally got for the fruit. I believe he has given the figures correctly. I believe the average Exchange gets a fair average for the state.

Mr. Call: So that, as to the cost of producing, and the amount received, as the rate maker here, you would have no reason to differ with these people that have been introduced on behalf of the shippers, would you?

"Mr. Chambers: No, sir.

"Mr. Call: If you were picking men here to show this before this Commission, you would pick these men, would you not?

"Mr. Chambers: I think I would, yes, sir."

Now, if there is any man in all the railroad employ who knows this man, it is Mr. Chambers. Now, the Southern Pacific in regard to this testimony has treated us a little more fairly than the Santa Fe in their brief. On page 59 of the brief of Mr. Durbrow, he says:

27 "So far as the cost of producing oranges is concerned, we have no hesitation in relying upon the testimony of Mr. H. B. Chase, who was introduced on behalf of complainants, because we are impressed with his candor and intelligence, and his apparent familiarity with the culture and marketing of oranges," and so forth.

Now, Mr. Chase testified that he lived in Riverside, the largest orange producing section in the state, with 20,000 acres of citrus fruit, and all that Mr. Chase said to justify this criticism was that in Riverside the production of oranges was 50 boxes less than the general average. He said the production was 100 boxes to the acre in Riverside, and that 150 was the average. That is all he said to justify any criticism of his testimony. To my mind it is what, to an ordinary man, would simply add credence to his testimony.

Mr. Norton: I never criticised his testimony.

Mr. A. F. Call: Just look here what you said, to begin with: "During a trial lasting four days, only one owner of orange property was put upon the stand, and he testified on cross-examination that he came from the least productive citrus region in the state."

And again, in your brief on page 51, you say:

28 "The only owner of orange property put upon the stand for the enlightenment of the Commission as to the conditions of the orange industry was Mr. H. B. Chase, of Riverside, who said upon cross-examination that his 1500 acres are situated in the least productive orange area of California, where seedlings abound and expenses are heavy."

Mr. Norton: That is not criticism of his veracity or against his testimony. On the other hand, it is accepted as absolutely correct.

Mr. A. F. Call: If it is correct, if we may take it as being accepted as correct, I desire to say it is shown here before this Commission that the cost of producing a box of oranges has increased from 75 cents in 1903, when this testimony was taken before, to a cost of $1.37 at this time, largely owing to the fact, as Mr. Chase says, that we get so much less production per acre, and that by doubling the acreage we get only 40 per cent increase in production, and the cost has increased from 75 cents to $1.37.

Now, I would not disagree with the conclusion of this Commission, but if a man would be such a fool as to put his money in a thing that would not pay, he ought not to call upon the Commission for relief. I think something of that kind was said in the pineapple case. I would not take issue with that, but what
29 we do say is this, that where the earnings of the initial lines are $116,000,000 a year, and on our $125,000,000 investment, with 10,000 men at work, we cannot make a cent, that the conditions are not such as to forbid an inquiry as to what is a reasonable rate. We can never be too poor to be just, but we are too poor to be liberal.

The Railroads have from time out of mind been talking about the beautiful service that we have, and about the increased cost of that service; about the benefits we have that other shippers did not have. Now, I want to add to that and say that whatever there is of that we want to pay for, if it takes the groves to do it. Whatever there is of that they are entitled to be paid for we want to pay it. But we do not want to pay one cent they do not earn, not one cent.

The railroads have talked here in the past, and they will talk here today, about the great advantage of this blanket rate. I want to say to you gentlemen that the blanket rate is not peculiar to our industry. The blanket rate proposition applies to almost every commodity moving from the Pacific Coast, and has since the beginning of business. It is something that is peculiar to that business, the coast business, and is undoubtedly due to its being a long ways from market, and that the difference in cost of trans-
30 portation is too small an item to justify a difference in the rates to different markets in the east. It is undoubtedly true that the larger question is with the carrier as it is with the producers, "Can they produce stuff over on the Pacific Coast, 2000 miles from the markets, and get it to the people of the United States at a price at which they can afford to eat it?" That is the greater question, and the blanket rate after twenty-five years of experience, has been found to be the best for all commodities from there, and therefore we are not enjoying any peculiar advantage in that respect. It is something they put in for their own welfare as much as for the industries of the State.

They have also claimed that we are greatly benefited and that we should pay for the diversion privilege which we enjoy, but that is not peculiar to our industry. That is common to all commodities moving from the coast, and it is an inexpensive thing. It means two or three telegrams to a car, and perhaps not that. It is a very trifling, slight expense incidental to the transportation of the products and the railroad business generally. Whatever that is we want to pay for it.

They have also claimed that the cars that they furnish for our business are more valuable, and that is true. They claim
31 that they have been heretofore heavier in proportion to the load than their ordinary car is to the ordinary load, and that is to some extent true. It has been in the past to some extent true.

They also claim they carry some ice for us, and they are entitled to pay for that; that is true. Whatever these items are actually worth, we want to pay for.

But I want to call attention to the fact that these cars are operated by independent companies. The Santa Fe's business is handled by the S. R. D., and the Southern Pacific's business is handled by the P. F. E., an independent corporation owned by the Oregon Short Line and Southern Pacific companies. These companies handle this business on a separate set of bookkeeping. I suppose it is all one thing, but they are handled with a separate set of bookkeeping, and under that arrangement and under the contract between these carriers and these car lines, it is agreed that the car line company will furnish the cars. They furnish the car; that is, the railroad builds the car for the car line company and the car line company pays the interest and depreciation, so that the car line company furnishes the car and the car line company furnishes the expense incidental to the diversion, incidental to the cleaning of the car and incidental to the maintenance
32 of the car; and all this for a set charge varying from 6/10ths to ¾ths of a cent per mile for loaded cars.

Now, all this extra expense that has been referred, we want to pay for once; we do not want to pay for it twice. If we pay for the mileage we pay for it all once, and that should end it. It should be entitled to no further consideration, and when these car line companies furnish the car, clean the car, inspect the car, divert the car and pay for the depreciation on the car, they have paid everything that has been claimed against us as an extra expense in connection with the furnishing of these cars. And when we pay that mileage, which is based upon the average haul of 2500 miles, when we pay that mileage we give them a free car to handle our business, with all depreciation paid and all interest and all expenses of every kind and character, when we pay that 6/10 or ¾ of a cent per mile for a loaded car.

Mr. Durbrow: You do not wish to be understood that you pay that mileage?

Mr. A. F. Call: I say when you charge it to us we pay it. If you put it into the rate as a reason for making an advanced rate, we pay it; don't we?

Mr. Durbrow: You do not pay that to the car.

33 Mr. A. F. Call: Directly we do not, but indirectly we do it?

Mr. Durbrow: We are willing to concede you pay it indirectly.

Mr. A. F. Call: That is all I stated. That would only amount to about 5 cents a hundred, and we thought it would be fair to the other side that they ought not to ask us to furnish a free car and all the expenses for taking care of it paid for, and we thought if we paid half of that charge it would be fair. If the cars were worth twice as much as a box car, and I do not think they are; I think they are only worth about 30 per cent more, $1100 against $1400——

34 Mr. Durbrow: $1625 for a Pacific Fruit Express car.

Mr. A. F. Call: I am not trying to be particularly accurate

about the figures. The point is it does not equal 50 per cent; it does not equal double the cost of an ordinary box car. So that in charging us with half of that mileage we can say we are liberal. It reduces them to the basis of furnishing an ordinary box car for our business when we add that to an ordinary rate on that ground, and we thought to add that.

For hauling the ice they are entitled to some compensation, but how much? It is easy to say this is a fine service they give over there. Just what is it? They haul ice for us. But how much ice do they haul and what is it worth? We ice half of the orange cars and a quarter of the lemon cars. The initial icing is four and a half tons. They do not carry the ice bunkers full all the way to market, because the ice will melt crossing the desert, but if they carry it full clear to the market, pro rating this quantity of ice over the whole number of cars it does not exceed two tons of ice to the car that they carry.

What is it worth to carry that two tons of ice? It depends on how you figure it. If you figure it on the basis as claimed that we are entitled to pay for that ice all that they charge for carrying the oranges, that is one basis. If we assume this is an incident
35 to the business, this carrying of the ice when necessary for the protection of the product en route in cars built for that purpose, which has been instrumental in part in building up this great tonnage for the railroad companies, is it not fair to say if we pay them for the actual cost of carrying that ice, it is sufficient. Ought we to pay a revenue rate on that? Should it not be considered the same as it would be in carrying the car. On that basis it is only worth $2 a ton to carry it through because Mr. Peabody confessed—I won't say confessed, because he is not a criminal, but he stated that it costs them three cents a mile per loaded car for transportation expense. On that basis figured on the average load to the average car it equals $2 a ton for the actual transportation cost. What we should be charged for the item of carrying ice depends on how you look at it, whether it is based on the cost of carrying the oranges, or whether it is based on the actual cost to the railroad for the carrying of the ice as one of the necessary incidents of the railroading for the protection of one of the products the railroad carries.

They have also claimed they are entitled to extra compensation for the weight of these cars, that their average car load was 18 tons for all their business, including lumber and coal and
36 everything carried of every character, on which their loads averaged 18 tons per car, and that our load averaged only 14 tons; that our load was not loaded the full length of the car, but there was a space for bunkers for carrying the ice; therefore they did not carry as large a load, considering the weight of the car, as they carried in an ordinary box car. That has been one of the chief claims they have advanced for increasing this rate.

But with regard to that there is a new invention which undoubtedly will interest you to know of, and that is a simple contrivance—and the only wonder is why somebody did not think of it before—of raising the partition between the chamber of the ice to the main

body of the car and hang it up on the ceiling for all ventilated loads. In that way they load the car from end to end and increase the load on the Santa Fe cars 84 boxes and on the P. F. E. 72 boxes, or 468 boxes to the train, making some trains on the Santa Fe about 6,000 pounds and the Southern Pacific about 5,000 pounds additional load. That brings up our average load of all ventilated cars up to the full average approximately of all their loads. Therefore they no longer have that argument that we are not able to load the full length of these cars. It has been destroyed by this invention.

37 Now, counsel spend a long time in their brief, a great many pages, to explain to you that these shippers do not want to use this long car, do not want to load to the end of the car. There are 50 pages of the Southern Pacific brief as I saw it a few minutes this morning, devoted to the proposition that these shippers do not want to use that kind of a car. The only basis that they have for any kind of argument is that they have not used it. But there has been no minimum provided that they should use it. It has been a new thing put on to them and no request to use it. Nobody has been asked to use it to the full length of the car, as far as appears in the record. We have loaded out a great many of them, and the testimony in this case is it is satisfactory, and I can dispose of that argument and that issue and all that pertains to it, with one short statement, and that is: I can say here as said before to the Commissioners out there in Los Angeles that we represent 90 per cent of all the shippers of citrus fruits in California in this case; and we agree on the record that we will use them to the full length of the car, and we hereby consent that the Commission now make an order so that the railroads can put it in their tariffs, that we will use them to the full length of the car. They can build a car any length.

38 Commissioner Prouty: How do you determine when the car is loaded whether it is to be used with ventilation or whether it may require ice?

Mr. A. F. Call: We do not ask them to ice our ventilated cars. We cannot determine that.

Commissioner Prouty: I know. After the car is loaded the collapable bunker cannot be lowered and the car cannot be iced; so at some time your shipper should designate as to whether he desires icing en route. It sometimes happens that ice is used after the car starts, although it is not put in first.

Mr. A. F. Call: He must order that at the time it is loaded. That is a matter of such very rare occurrence, that while it is theoretically a proposition in the case, practically it is not. We can determine before we load the car whether we want that car to have ice or not. On these orange cars we commence refrigeration and keep it up. Up to a certain time in the spring of the year we ship our cars under ventilation. It may vary a little with different seasons, owing to the character of the fruit, but usually it depends on weather conditions and they all commence about the same time, icing. It is a weather condition more than anything else, and with our own icing we

have our cars under refrigeration. With regard to load-
39 ing under refrigeration we had proposed to load seven tiers wide and two high instead of six, which added six to the former loading capacity, so that whether iced or ventilated they got practically a full load of fruit. It no longer lays in their mouth to say that they are furnishing a bigger car than necessary for the load they get. The argument has been taken away from them by the introduction of this new invention.

Mr. Mayer: There are practically a thousand of them in use now.

Mr. A. F. Call: 800.

Commissioner Prouty: How much does it cost to transform an ordinary car?

Mr. A. F. Call: About sixty when built new and one hundred and twenty to transform. As we look at it that argument is no longer in the case because of this new condition that arose in which we acquiesced. We want to do all we can. We do not want to put a block in their way. We want to help all we can to move the fruit economically because we realize it must be moved more economically and we want to help. We do not want to stand in the way. It has got to be done.

With regard to the condition of the lemon industry, I want to say for the information of the Commission the lemon industry
40 is quite different from the orange industry. We talk of them together as citrus fruits, but the conditions surrounding them are quite different. The lemon tree is a wonderfully consitive tree. There are only two places on earth where lemons are raised commercially. One is California and the other is on the Island of Sicily, and down on the lower part of the boot of Italy. Other places produce them. Florida produces a few boxes, enough for home use and maybe occasionally a little for outside, but not any in commercial quantities. Spain and Australia produce a few, but the only places where they are produced for the consumption of the world are on the Island of Sicily and in Southern California. Sicily and Italy produce about 59,000 carloads a year. California's maximum is 6,000 carloads. That was our biggest year, last year.

California is trying to grow into it, but here is the difficulty that confronts the California lemon grower. The soil conditions are just as good as they are in Sicily; the climatic conditions are a little better in favored sections of California and there does not seem to be any reason why we cannot produce just as good a lemon. The varieties are the same. A lemon is the same wherever you
41 find it. The variety is the same and the character of the fruit about the same as the Sicily fruit. We do not claim any great superiority in that respect, if any. There is no great superiority in California conditions over Sicily, if any. I do not think our lemons freeze quite as much as they do in Sicily, but we have them freeze.

But here is what we are up against, what we showed to Congress, and that is, there is an immense amount of labor required to produce a box of lemons. In addition to what I have said already, it takes eight to ten years to produce the tree. The fruit is smaller

than the orange, only half as big. One hundred and fifty oranges will fill a box and perhaps less than that. It takes on an average 330 to fill a box of lemons. 300 to 360 are the popular sizes on the market, but 330 is the average. So it takes twice as many or more than twice as many lemons to fill a box as it does oranges. Those lemons have to be picked every month in the year. The lemon is a prolific bloomer. It always has on it all sizes of fruit, from the size of a pea to a marketable size. They are not picked with regard to the condition of the fruit, but picked with regard to the size of the fruit, picked by hand. Pickers go around every month in the year to see what are big enough to pick. Each fruit is measured by a ring before it is picked, and maybe the pickers will
42 try three or four by putting the ring over them before they find the proper size. All that costs money.

Then we have to take them down to the packing house and wash them and put them through a curing process. They have to be cured. You cannot ship them right from the grove as you can an orange. An orange is shipped as quick as you get it from the tree, but lemons we hold all the way from two to six months in order to get them into condition where they will ship, because the rind is full of water when you take it off the tree, and it is tender, and a little injury will make a decayed lemon. We pick them as carefully as we can and take them down and wash them with an antiseptic wash. Then we put them into a curing house made of double-walled buildings which are susceptible to great ventilation, the walls being closed up very tight, and we put them in tents in those buildings. By reason of the fact that in California the nights are cooler usually, by opening up the tent and buildings at night we let in a lot of cool air all through that curing room, and it takes off the gases from the lemon and holds it at an even temperature and uniform degree of moisture during all the curing period. After a lemon is cured, it will keep for a considerable time, longer than the orange.

43 There are some lemons in California and some lemons in Sicily that ripen on the tree, that turn yellow on the tree and those are of a very poor keeping quality. Those we ship under refrigeration and ship them soon, shipping them to quick consuming markets, auction markets in big cities where they are sold right away. But three-quarters of the lemons that are shipped do not go under refrigeration. The quarter of the crop that do are accounted for by those that are picked from the tree ripe. A good cured lemon need not go under ice any time of the year, no matter how hot it is. Sicily lemons come over here in boats requiring thirty days en route, and are in good condition; occasionally only they are decayed.

That is the difference between the lemon and the orange. It takes so much more money to handle the lemon, for the packing house expense of 57 cents a box. There is not any way that can be saved, while the packing house expense on a box of oranges is 30 cents. It is nearly double. That is all labor. The picking costs twice as much. That is the reason why the lemon has not grown and developed as has the orange, because of that labor and that expense.

You cannot get labor in the United States without paying the market price for it. That is one of the peculiar things, you have to pay labor the ordinary market price. In California it costs four
44 times as much for the same unit of labor as it does in Sicily. That is shown by this record, and it was shown before Congress. That is the reason why the lemon must have more protection than the orange in the way of a tariff duty, because they cannot be produced without this heavy expense. The lemon from Sicily is produced by very cheap labor, 20 cents and 60 cents a day for labor over there, while we have to pay here $1.75 to $2.50.

Now they have got over there in Sicily a very big production and also a very low freight rate, 25 cents per hundred pounds from Sicily to the Atlantic ports. The entire charge, including the local charge, rail charge, and lighterage charge, does not make the rate from the grove to the Atlantic port over 30 cents, according to the testimony in this record. A box holds about 84 pounds, estimated; that is, box and all. The lemon weight itself is not that much. They can lay down lemons in New York on the seaboard there with their cheap labor and cheap transportation rates at less money than we can, and they can pay the added duty, 1½ cents a pound, and they do it, for less money than we.

The only time we can get into New York is during the fall of the year for a short period of time when the new crop comes. Their new crop comes about the same time as ours, and it takes
45 them longer to get their new crop to New York than it does us. We have some good prices there for two or three weeks, and when they are out of Sicily lemons. But during the other seasons of the year we go at a loss when we go to the seaboard.

Mr. Woodford testified to the cost of producing lemons. Mr. Woodford I want to inform you is the manager of the California Fruit Growers' Exchange, an organization of associations for the purpose of marketing the California products. He has been connected with the lemon industry for about seven years and markets 60 per cent of the crop; that is, his association does. He has accurate figures with regard to the production. As Mr. Chambers says, he is a man whose testimony he would not dispute. He gave the figures or average returns. The only returns he had were for the last two years, and they showed $2.02 for one year and $2.08 for the other year, the average return to the growers—That is, the total f. o. b. return to the growers.

Now, according to the testimony of Mr. Hampton, and they criticise Mr. Hampton in their brief as being not a lemon grower Mr. Hampton said he had been in the lemon business for twenty years or more. He has charge of several hundred acres directly for his lemon company. He has charge of the growing of the trees, the picking of the fruit and the handling and packing and selling of the fruit for his company. He has direct charge. There is no man
46 in California that knows any more about the business than he does. There is no attempt made to discredit his testimony, and Mr. Chambers admits he believes his statements are absolutely correct.

His testimony is that it costs $1 a box to produce the lemons on the tree for an average of good groves; that it costs much more than that for an average of all groves. I want to say right here, so that it will not be confusing to your minds when you come to look at this record, that there are lemon growers in California who, owing to the peculiar adaptability to the business and peculiarly fortunately location, with splendid soil and even climatic conditions, and so forth, made no mistakes during all the fifteen years they have been growing their trees, and who have found good markets, have gotten their customers and built up a trade and reputation and attended to it and have had good luck all the way through. There are three or four lemon growers in California who have made money. One of them is Mr. Teague, of the Limoneria Company. Another was Mr. Flagler—notable examples of successes which you find in any business. We did not think it was fair to ask you to take care of men who were unfortunate or would not work, who were not adapted to their business or were frozen out or something of the
47 kind. We do not ask you to take care of that kind of a man. We could not have introduced here before you 10,000 growers and given you as good an idea about the situation as we could by putting on one man who was acquainted with general conditions, and therefore we selected Mr. Hampton as being the man best acquainted with those conditions. He devoted a great many weeks to getting accurate data, of the actual cost of every single item covering over 3,000 groves, owned by various individuals, and also considering that twenty years of experience in addition to this investigation. He gave you the best he knew, and that we made no mistake I think was conceded when the other side said that they would not doubt his testimony.

Mr. Hampton said it cost a dollar for the good average grower to produce a box of lemons and it cost 25 cents to pick a box and haul it down to the packing house, and it cost 57 cents to wash and cure it, pack it and put it on board the cars. That makes $1.83. Then it costs 7 cents to sell it by the most economical method we have. We have given the railroads the advantage of every single figure in their favor. There are lots of people over there that do not market for seven cents, but the associations and exchanges and markets by reason of their co-operative companies, can market
48 for 7 cents where other people would have to pay 15 and do pay 15. So we give them that advantage. That makes $1.90 that it costs the average good lemon grower in California to put his product on the market. That does not include any interest on the investment. If you are going to include that, it would cost on the basis of 6 per cent, which the railroads say they are entitled to have—if we were entitled to have 6 per cent and apply that to the average production it would add 60 cents a box and make $2.50 a box we ought to have instead of $1.90.

The trouble with the whole situation is this, that owing to the competition of Sicily, the fact that they can produce cheaper and transport cheaper to the New York seaboard, that they can come clear over to the Missouri River and are right now—the Santa Fe

Railroad Company that pretends to be such great friends of the California producers have got their solicitors down at New York soliciting business of the foreign lemon growers and carrying the lemons back into our country. They carry them clear back into their territory.

Now, the fact is we cannot market our present production of lemons without going into the territory of the foreign lemon; That is, the eastern part of the country. The country west of the Mississippi will consume about half of our product and that
49 country will pay us a small return on our investment. But when we pass the Mississippi River we begin selling at a loss. Those figures are illustrated by a table we have prepared here and offered in evidence. You will find it on page 31 of our brief. If I may impose on you, I would ask you to turn to that page. There you will see what we are up against in this lemon business. The first classification is seaboard and adjacent points—Boston, Montreal, New Orleans, Memphis, Atlanta, Birmingham, Nashville and New York. It gives the prices for 1908 and 1909 received at these places, the number of cars sold at each point and the average amount received. The average for the seaboard group for 1908 was $1.41, showing a 60-cent loss, 60 cents below the actual cost of production. In the year 1909 it was $1.69.

Commissioner Prouty: By amount received, you mean amount received by the grower?

Mr. A. F. Call: By the grower.

Commissioner Prouty: From the association?

Mr. A. F. Call: No; that is not the amount received by the grower from the association. That is the amount received by the association.

Commissioner Prouty: So that the expense of the association should be taken out of that?

50 Mr. A. F. Call: Yes, sir. Now, you will notice that as we get back from the seaboard points that our price improves by just this amount; that is the addition of the local of transporting the lemon westward. If you add that, you will find that it comes to approximately the amount we get for our lemons.

For points of the next group between the Alleghenies and the Mississippi River the average there is $1.74 for 1908 and $1.75 for 1909, or a slight advance from seaboard points.

You take the third group on that page, west of the Mississippi River, and it will show you how we can stay in business, why we can keep those groves going. Those prices are to points west of the Mississippi River, Denver, Salt Lake, Fort Worth, Kansas City, Minneapolis, and so forth, at which the average for that group was, in 1908, $2.49 and in 1909, $2.53, showing there was a profit in the business, a bare 6 per cent on the investment in all that territory west of the Mississippi River, excepting only that territory tributary to the Gulf which is a low average again.

It seems that these figures ought to demonstrate beyond any question the truth of our proposition. The defendants have some hypothetical figures in this case. They have some hearsay testimony,

They had a fellow by the name of Smith that went around New York and said he found some people who preferred to have
51 California lemons, so he testifies that California lemons will sell for more money than the foreign lemons. They had a man by the name of Hayden who did not know anything about producing fruit, that the commissioners over there would not even let be cross-examined, that came in and testified from hearsay about what some people had told him they produced from their groves. That is the only testimony they have in this case to contradict the record.

It is fair to assume that the California people are not going to sell their lemons for any less money than they can get for them, especially when they are getting a loss now. It is fair to assume the fruit brought all the market would pay, whether foreign lemons are worth more or less at various differing seasons of the year, and the fact remains that these are the undisputed averages that were actually received, and that our actual cost is undisputed in this record, and the actual result is we sold everything we did sell east of the Mississippi River at a loss and that we only saved ourselves by what we did sell west of the Mississippi River.

The lemon is different from the orange in this respect, that you cannot make a man eat lemons when he don't want to. He will eat oranges if they are cheap enough. You cannot crowd any more lemons down the throats of people west of the Mississippi
52 River than we are making them eat now. Therefore when we have to increase the production, it has got to go into the territory of the Sicilian lemon, so that when we try to increase our lemon area or production we are going to do it at an increasing loss, and nobody knows that any better than the Santa Fe Railroad.

Commissioner Prouty: How many lemons are consumed in the United States?

Mr. A. F. Call: The consumption year before last was 12,000 carloads. At that time we produced 5,000 carloads and 7,000 carloads were imported. The foreigner makes the market.

We satisfied Congress and the President of the United States that it is a good thing to produce lemons in America. And whether it is right or wrong, that is the conclusion of the United States government that it is a good thing to produce lemons in America. One good reason for that is that the whole foreign lemon industry is in the hands of a few Italian importers, and American people pay $10 a box for lemons in the summer time when they have to have them when California cannot produce them.

They come back at us. The railroads come back at us and different people and say, "Why don't you get out and produce the stuff and get enough lemons here for the whole American
53 people to eat." They forget that it takes eight or ten years to produce a lemon grove. They forget it costs $1,000 an acre. They forget it takes a man with a paramount courage to go over there in California and try to produce anything, with these trans-continental lines watching to see if his wife occasionally wears a silk dress. I tell you the railroads have got men in that state look-

ing for signs of prosperity, and if they see a single, solitary sign of prosperity, they will raise the rate on you.

Mr. Norton: They are pretty well dressed people out there.

Mr. A. F. Call: Yes; they all work for the railroads. These railroads claim they are entitled to a whole lot of money out of us because they give us an expedited service, but the facts developed on the hearing of this case show that we do not get any more expedited service than they give on transportation of other through freight on any other commodity that moves from that coast. We have what they call a facilitated service. That is what they claim. The record in this case shows we do not get it. The testimony shows they give us about 9 days and a few hours.

Mr. Norton: The record does not show anything of the kind, so far as the Pacific Fruit Express is concerned.

54 Mr. A. F. Call: That is a question of opinion.

Mr. Norton: No; it is a question of record.

Mr. A. F. Call: It is a question of believing——

Mr. Norton: I would like to see you point to any of the testimony that will support that statement so far as the Pacific Fruit Express is concerned. I challenge you to produce it now at this time.

Mr. A. F. Call: I am glad to accept the challenge.

Commissioner Prouty: You have consumed almost an hour and a half now. You need not spend much time looking up the testimony.

Mr. A. F. Call: I have just a few more remarks to make on this branch of the case. I say this, that they schedule us at about 9 miles an hour——

Commissioner Prouty: I think the testimony shows with reference to this that the service was reasonably satisfactory to the shipper; that it was not extremely rapid, but it was a reliable service and satisfactory.

Mr. A. F. Call: A satisfactory service but not so fast as to be entitled to any extra compensation, and that is the proposition we will let that point rest upon.

Now, with regard to the orange rate which is the most im-

55 portant to us because it involves a larger shipment, 34,000 carloads of oranges as compared to 6,000 carloads of lemons. It means a living or existence for more people than the lemon industry. I say this, that there is not anything in this record that will justify over an 85-cent rate on oranges, based upon what they are carrying. We are giving them their biggest product; we are giving them their biggest revenue. We are paying out $14,000,000 a year for freight and charges. It is an increasing revenue. It is the best thing the railroads have got. It is the highest rate of anything on the coast. And I would like to know upon what ground we are singled out for this invidious distinction of paying the most. I would like to know upon what ground they are entitled to do it, because I tell you we are only getting 1½ cents for our fruit and not getting that according to this record, only 1½ cents a pound for our fruit after taking out packing charges and transportation charges. It is not as much or more money as a farmer gets for onions or beans

or rhubarb or anything else along that line. It is not a high class product. It is not worth the money that these other things are worth. It is not worth the money that canned fruit is, or canned fish, or any of those things. They are getting a great deal more per pound, and we have a product that does not perish on
56 our hands. We have the least perishable product for carriage. The evidence shows that the amount of damage claims—and that is the only measure of the perishability of a product—that were actually paid upon this product are less than the average of all their business, and yet they call it perishable. We are satisfied with a delay of nine days to Chicago and do not object. Why? Because the fruit does not perish. We have it in Chicago now where it does not perish. It is not a perishable product. It is just an ordinary farm product; it is just an ordinary product of consumption. We want to pay just an ordinary price for transportation, plus any actual extra expense in carrying that product to the market. Anything more than that is robbery. Anything more than 85 cents is simply because they have gotten in the habit of doing it and because we have gotten in the habit of paying it, and that is the only justification for it. People will eat oranges if they can get them cheap enough. They are a food and table product that every man in the United States ought to have. They ought not to be too expensive for any man to eat. We want to keep on producing them and we want the people to keep on eating them. We want the common man to have them, the man on a dollar a day to have oranges on his table as well as every other man, and we can do it if these railroad companies will transport them at the same price they
57 transport other cheap products for. But they have singled us out, and why? Because we produce the most tonnage. That is the only reason on earth. They try to justify it because we produce the most tonnage and therefore ought to pay the highest rate and say that we have the cheapest product and therefore ought to pay the highest product charge, we have the best carrying product and therefore ought to pay the highest freight charges; that we load our own cars and unload our own cars and fix them so there is no loss, and therefore the railroads ought to raise the rates on us—that is the fact about this case.

When we get through with this case, if you will sift out the facts in it, you will come to the same conclusion and that is, that there is no justification for a rate over 85 cents.

I thank you.

58 *Argument of Joseph H. Call in Behalf of the Complainant.*

Mr. J. H. Call: It seems to me that my brother Frank has left me very little to say in this case, but there are a few features of the case that appear to me to be somewhat controlling in their nature, to which I would like to refer before the case is submitted upon the oral arguments.

The fundamental principle, as I understand it, which rests at the very foundation of every rate charged is this, that the railway com-

panies have been placed in charge of the public instrumentalities of interstate commerce as a sort of public agency of the Government of the United States, endowed with certain powers in the nature of franchises to primarily fix the rates and charges for the movement of that commerce. It has long been settled in the administration of justice in this country and in the construction of the constitution of the United States that those rates must be such that the railway company may demand that they be sufficient to pay a fair return upon the capital invested. The railway companies have a right to demand that under the provisions of our bill of rights taken from English Magna Charta, under the provisions of the fourteenth amendment they are entitled to demand a fair return upon the actual
59 value of the property they have invested in the control of this public highway.

The public also has the right to demand in the courts of justice of this country, as an equal constitutional right, and as a corollary right, that no more shall be taken from the public for transportation over a public highway than a reasonable return upon the capital invested. When the railways fix a charge by which they, as a public instrumentality of this nation, take more than a fair return upon the capital invested, they are taking property without due process of law and without compensation, and in violation of the constitution of the United States.

We ask you to consider that the public has an equal right to maintain its claims to justice along these lines and to be equally entitled to be protected in the rates as the railways would if we were seeking to take their property without compensation and at an unjust rate. We claim that the rights of the public and the rights of the railways are corelative under the constitution and under the laws.

It has been shown that the railways under present exactions and tariffs which they are making, are receiving a large return upon their capital investment and upon the value of their roads.
60 They claim a right to six per cent. upon investment. It has been shown that the producers of this particular fruit are receiving no more than 1 per cent. upon their investment, even less than 1 per cent. in most instances. To equalize the rate, and to give a fair return to the railways, would require a reduction not only to 85 cents, but to give the growers and producers the same rate of interest upon the investment, which the railway companies are receiving, this rate would have to be cut to 65 cents a hundred instead of 85 cents as conceded by my brother Frank.

Many of the questions now before the Commission were the subject of very full investigation in the former rate case, decided in 1905, and upon conditions which were then found to exist. In order to expedite the matter and present the questions in their most succinct form, I would call the attention of the Commission to these circumstances. The Commission found in Volume 10 of the Interstate Commerce Reports, the former citrus fruit cases, that a combination existed between these initial lines to pool the earnings on

citrus fruits. It was shown the rates were made in combination, and it was found the earnings were pooled.

The testimony in the present case shows that the rates are
61 still made by combination, by monopoly in transportation. Transportation rates from the Pacific Coast east are not made by any competition between the roads; no just level is realized by reason of any competitive conditions among the carriers. The rates which are now in existence are practically the rates of 25 years ago, when fruit sold for five dollars a box upon the trees, and when there was more or less competition between the carriers. Those rates they established have ever since been maintained by this combination and by the monopoly in transportation, and that is the reason why that while the cost of the production of this fruit and of this commodity has doubled, the rates have not been reduced because they are maintained by monopoly.

I am well aware that this Commission is not attempting to enforce the provisions of the Sherman act, but I ask this honorable Commission to consider, in determining this rate, how this rate has been maintained and as to whether the carriers are before this high tribunal with clean hands, or whether they are here as wrong-doers, criminals in the eyes of the law, asking you to take a rate which they have established by illegal monopoly and by illegal combination as a fair rate, and throw the burden upon us to upset it be-
62 cause it has long been maintained by those methods.

In the former case the Commission found the following facts, which I consider to be of controlling importance: The Commission found that in 1903 the actual cost f. o. b. of producing oranges was 75 cents per box. The testimony in this case shows that the actual cost of producing oranges f. o. b. is $1.37, or nearly double what it was then. All those elements of cost have been described and stated by the different witnesses who are conceded by Mr Chambers to be men of most excellent character, and in his own language, as he says, if he was going to prove these facts which we have adduced, he would have selected the very men for the purpose that we have produced on this trial, such men as Mr. Hampton and Mr. Chase.

The Chairman: Is there anything in the record to indicate how much of that increased cost has resulted from the decreased production per acre?

Mr. J. H. Call: There are figures upon that. Part of the increased cost has come from actual impoverishment of the soil which requires a larger fertilization, which in all instances has not been had, although there has been an average decrease in the cost per acre. If you were to maintain the same production per acre, it would require a large amount of fertilization and a much greater
63 increase, so that one offsets the other.

The Commission found that in 1903 the cost of producing lemons f. o. b. was practically the same as that of producing oranges. It has been shown by the former testimony that the cost f. o. b. for lemons is $1.83 per box. It actually costs that much money to put the lemons on board the cars, and that does not allow anything upon

the investment in the groves. The Commission found that the price received for oranges for the season of 1901 and 1902 f. o. b. was, per box, $1.40. The evidence in this case shows that for the season of 1909 the average received per box f. o. b. was $1.52, showing an increase in this year of 12 cents a box. As against that, we measure the value of all the products and articles in this country by a material increase of our other causes, such as the increased volume of money which has affected the price of every article and every commodity which we consume. Yet it appears that in all those years there has only been an increase of 12 cents a box in the price of oranges, while the cost of producing them has nearly doubled.

The Commission found that for the season of 1902 and 1903 20,000 carloads of oranges and citrus fruits were transported. That was the volume of the industry. The record here shows that
64 for the season of 1909 there were 40,937 carloads produced. The volume has been doubled. There is not an acre producing oranges or lemons in California today that was not planted and existed at the time of the former hearing when the testimony was taken. It was the groves that were then in cultivation and planted that have since come into fruition that have produced this addition- 20,000 carloads of fruit.

Much stress has been laid upon the proposition by counsel on the other side that this industry has increased in volume and because it has increased in volume it must show prosperity. Does it follow that because the acreage has increased or because business has grown in volume, that it is necessarily profitable? It is said by the Census Report that half of the people of the United States are engaged in agriculture and that a quarter of those engaged in agriculture are workers upon the farms. In other words, ten millions of people are working upon farms. The total value of their product this year is between eight and nine millions of dollars. That does not allow more than 60 cents to the person or the individual for his work and not paying his own board. Why is it, then, they engage in farming? Why are so many people engaged in a business which yields them only their board and an average of 67 cents per day?
65 It is because it is a means of livelihood; they at least get their living out of it, and because they hope for better returns. What profession is there in this country where, on an average, the members of that profession or that business are prosperous? I submit there is nothing in the argument that because a business has grown in volume it would follow or should be presumed to be a profitable industry.

Considerable stress has been laid in brief upon the dead weight proposition. I think that has been very fully illustrated by my brother upon the argument and further in the printed brief. We do not concede there is any dead weight here which is properly chargeable to citrus fruits which may not be sustained by any other commodity. The undisputed testimony in this case shows that westbound refrigerator cars, taking all the refrigerator cars used in this traffic, that on the Southern Pacific lines out as far as Ogden,

including those going north into Oregon, that two-thirds of the westbound freight is empty refrigerator cars and one-third loaded. That is not a fair statement as to the amount of refrigerator cars going empty, because of the place selected, and including the cars that are switched off from the Oregon Short Line which
66 can take loads going on. But taking that as a fair statement, for the purpose of argument, and taking the Santa Fe line, the testimony shows that one-third only of refrigerator cars westbound on the Santa Fe line are returned empty. We have then an average of one-half of the westbound refrigerator cars going empty, in round figures. One half going empty and all going loaded east, so that taking the total mileage of these 20,000 refrigerator cars, they are loaded three quarters of the time, or there are three-quarter loads in them all the time.

The annual reports of the Southern Pacific and Santa Fe roads show that that is a less per centage of empties than is carried by these roads of all the freight cars. Taking all the freight they move, considerably more than one-quarter are actually empty. The testimony shows that these refrigerator cars, which they say go west, move in such large volume and which, as I have pointed out, do not exceed the average. The reason why they do not go west loaded was because the companies found it more profitable to expedite the service, and they use all the cars because it is more profitable to use them all the time and not wait for loads. If they had waited for loads, they could have used these cars for other
67 freight, but it was more profitable for the companies, on account of the nature of their business, which they understand better perhaps than I do—it was more profitable to haul those cars west without waiting for loads, and because so many of them have gone west they want to charge that extra cost upon the citrus fruit.

The Chairman: We will suspend here for recess.

(Thereupon, at 1 o'clock, p. m., the Commission took a recess until 2 o'clock, p. m.)

68 **After Recess.**

The Commission met pursuant to the taking of recess, at 2 o'clock, p. m.

Argument of Joseph H. Call, Esq., (continued).

Mr. Call: I will resume expeditiously. The controlling features and factors, as I understand them, upon which the Commission based its decision in the former fruit cases, I had mentioned, that the Commission found as to the cost of producing this product in the former case, and I have shown what the cost is now, the cost now being practically double what the cost was then and the market prices being about the same.

The Commission considered that a very important factor in the former cases, because upon the first hearings before the Commission

sufficient testimony was not taken to enable the Commission to find as to the value of the service to the producers, inasmuch as it was not shown what the cost was of producing this commodity and what the market prices were, and the Commission desired specific information upon that subject. That is the reason why they ordered a rehearing of that case and upon that rehearing made those findings of facts as going to the measure of the value of the service to the producer and the shipper.

The cost of producing the goods has doubled since 1903.
69 The market values are practically the same.

As to the earnings of the defendant railroads, the principal lines and the initial lines being the Southern Pacific and the Santa Fe systems, the Commission referred to these facts and they found that in 1895 the net earnings per mile of road of the Santa Fe system were $967, and that at the time of the hearing when the testimony was taken in 1903, for that fiscal year ending June 30, 1903, the net earnings per mile of road on the Santa Fe had increased to $3,315. Now then, since then, since 1903, and for the year ending June 30, 1909, the net earnings of the Santa Fe are $4,208 per mile of road.

On the Southern Pacific the Commission found that the net income per mile of road for 1895 was $2,269; and for 1903, when the former cases were heard, the net earnings were $4,037 per mile, had doubled in that time; and for the last year the net earnings for the Southern Pacific System—it being practically, as I understand it, twice the number of miles of road that they had in 1903—were $6,451 per mile.

Now compare that with the average earnings of the railroads of the United States. The average earnings for all the railroads in the United States per mile of road are $3,189; and on the Southern Pacific, $6,453.

The average earnings per mile of road on the whole
70 Southern Pacific, including branch lines that are built, the outside lines, the lines built for strategic purposes, to keep out competing lines, is, still, per mile of road, double the average earnings of all the railroads in the United States. And yet with the orange producers being compelled to spend twice as much money to get their crops aboard the cars and with a market that has not increased in price, those railroads still want to maintain this orange rate, and, as to lemons, to increase the rate.

Those I consider important facts that I would like to impress upon your Honors, because those questions were considered to be very important at the former hearing—the value of the service to the producer measured by what he can get for his crop, and the cost of making it, and the earnings of the defendants as compared with former years and as compared with other roads.

Measuring this rate, this commodity pays the Santa Fe Railroad system, as has been shown, 1/16th of all the freight money which they receive. One-sixteenth is paid by this commodity! It has been a growing commodity! The volume of freight moved is increasing, has increased, has doubled since the last hearing. With the vast

volume of commerce moving in carload lots and with an extra charge made for refrigeration, extra to the railroad rates, I sub-
71 mit to your Honors that this freight should not bear a higher rate than other California commodities moving the same distance.

We have appended to our brief, commencing at page 85, tables of the commodity rates of California products, to blanketed territory. Twenty-eight commodities — named at page 85, of California products, not one of which compares in the remotest degree in volume to the volume of citrus fruit, and yet the average rate on those 28 commodities is about 85 cents a hundred. We have followed that up with other commodity rates, showing rates on 155 commodities and the average rate is about 85 cents on those commodities. I submit that there has not been a suggestion made in the briefs as to any valid reason why a higher rate should be charged on this vast volume of citrus fruit which pays extra for refrigeration, that does not apply to any other commodity.

I wish to readvert for a moment to the claim of dead weight which ought to be charged against citrus fruit as contended by the other side. I have shown that the evidence here establishes that the number of empties of refrigerator cars carried as a whole, does not exceed the number of empties of all other freight. But it is contended that the size of the cars and the fact that the
72 bunkers limit the capacity, where these collateral bunkers are not used—that is a matter that the railroads can repeal, these bunkers can be moved up and that can be eliminated—but taking the highest claim contended for by the defendants, five tons to the car and two tons for ice, making seven tons as the extra weight carried (which is the very highest contention made by the other side and we do not concede it at all except for the purpose of argument), Mr. Peabody, who is said to be the highest expert on traffic matters that there is, has told us that the actual cost of moving a loaded car one mile is about 3 cents, and he enumerates the items entering into that, including train crews, fuel and water and all other labor, practically everything except maintenance of way. Three cents a car load! And he has told us that these loaded cars average close to forty tons.

I would like to have the Commission consider a moment as to what is the cost of moving this extra seven tons that they contend for. A car of citrus fruit, of oranges, moves to the average center of distribution, on the average, 2500 miles. At 3 cents per mile per car load, that would give us $75 a car, which is under $2 per ton for freight, under $2 per ton for moving 2500 miles. Seven tons will cost $14, taking it at $2 a car. Now we load 14
73 tons of citrus fruit to the car, and they claim that that extra charge is $14, which is $1 per ton chargeable to citrus fruit according to their contention, and that is the utmost that they have a right to claim should be charged against citrus fruit—$1 per ton extra and other freight. We contend that there is no other extra and that is wholly made up in the refrigerator charge and the extra uses to which these refrigerator cars are put in the moving of other

commodities and the extra mileage they make. The extra return from those refrigerator cars as compared to other cars is nearly three to one. They cover nearly three times the distance that other cars do in the course of a year. That more than offsets, by a great deal, any other claim.

In view of the fact that our time is so limited, I will leave the remaining time to Mr. Mayer to close for us.

Argument of Mr. T. J. Norton, on Behalf of the Defendants, the Santa Fe System Companies.

Mr. Norton: If the Commission please, on account of the number of things I want to call the Commission's attention to, I will have to talk with a great deal of speed. We have about an hour and fifteen minutes apiece, Mr. Durbrow and I, as I under-
74 stand it.

The Chairman: Hardly so much as that. We cannot give you more than two hours together, or a little more—about two hours and a quarter at the most.

Mr. Norton: Very well. I will leave as much time as I can to Mr. Durbrow, and as I have said, I shall talk as rapidly as possible in what I have to call to the attention of the Commission.

I believe it is stated in the opening by the complainant that in this case the complainant attacks the increase in the lemon rate from $1 to $1.15 and also attacks the orange rate which is now $1.15, without saying to what it should be reduced, although the brief states that it ought to be as low as the lemon, or about a dollar, and counsel this morning stated that it ought to be as low as 85 cents. In addition to those two demands by complainant, they also attack the refrigeration rate, and those are the three things that I shall endeavor to discuss just as rapidly as possible.

Commissioner Prouty: Perhaps you might leave the refrigeration rate for discussion until after the test this coming summer, because there will undoubtedly have to be some further consideration of that next fall and the Commission will announce no decision on that at this time.

Mr. Norton: Thank you for the suggestion. While that
75 matter is discussed in the brief, in my oral argument I will therefore confine my discussion to the rate on lemons and the rate on oranges. If I have time, I may say a word or two about the refrigeration rate before closing.

Some criticisms were made this morning about the testimony of our witnesses. You will find on reading our briefs, I think, although they were prepared in a great hurry, that you will be able to get a good deal of light on this subject. We have dealt with those people without any adverse comment whatever, but in the brief I call attention of the Commission to two subdivisions of Section 1963 of the Code of Civil Procedure of California on the subject of presumptions, and we ask the Commission to keep the provisions in mind in considering the complainant's testimony. The new subdivisions of the section referred to read:

"That evidence wilfully suppressed would be adverse if produced;
"That higher evidence would be adverse from inferior being produced."

That is something that is given to us as a presumption by the statutes of California. And I follow that in my brief by the statement that a trial lasting six days—it is four days in the
76 brief, but it should be six instead of four—did not show the production of a single man as a witness who had money invested, so far as the record appears, in lemon groves; although at the close of the case counsel said "We had a hundred." We did not call them because we did not believe it to be our place to take the negative and disprove the allegations of their complaint.

Our second presumption is that out of the large number in attendance, only one orange man was put on the stand and that was Mr. Chase, of Riverside, who frankly admitted on cross-examination that he came from the least productive district in the State of California, and that the expenses were higher there than elsewhere in the state, in the growing of oranges; and, thirdly, that that country which was the beginning of the orange business in California, was a seedling country largely. That is the only reference we make to the testimony of these witneses, and as we examine the record I think you will see that we have the right to make use of that presumption of the statutes.

It is admitted, was admitted in the opening statement of counsel I think, and certainly admitted in the briefs—and I will not take time to refer to the pages—that if we had let this lemon rate alone there would have been no trouble about the orange rate and refrigeration.

77 I propose to show now about the reduction of this lemon rate and about the circumstances under which the rate was reduced and the circumstances under which we endeavored to increase it. It is admitted in the brief, and also by counsel for the complainant before the Committee of Congress when they were seeking to increase the tariff—you understand that there was formerly a tariff of 1 cent and the last Congress increased that one-half cent, the tariff is now a cent and a half—it was admitted at that hearing by counsel for the complainants, that these carriers had put their lemon rate to bed rock for the purpose of saving this lemon industry. Therefore the deduction is that the rate of $1 is not a reasonable one, is it not?

We start out, therefore, with the admission of complainant before Congress and in the brief it is repeated, that the carriers saved this industry.

When it was proposed, in 1902 I think first, to lower this rate, President Ripley of the Santa Fe Railroad, after conference with our people in accordance with letters introduced in the file, consented to the reduction of the rate on the theory that it was necessary to save this industry. He distinctly stated in that letter that he did not believe it was necessary and that the real thing to save the industry was better handling and better farming. Mr. Chambers showed in his testimony, and we show it by Mr. Powell,
78 the Government pomologist, that Mr. Ripley was right; and

Mr. Chambers testified that when this rate of $1 on the lemon was finally made an all-the-year-round rate, that was the time when the growers were putting into effect the advice of the Government experts to handle this fruit like eggs. He had found that in the methods employed in the orchards, dropping the fruit on the ground, throwing them into boxes and dumping them out of boxes and otherwise handling the fruit like coal, the decay, as they testified, ran as high as 45 per cent at times, and that by careful handling the decay absolutely ceased. Mr. Chase of Riverside testified that so far as his oranges were concerned the decay decreased from 45 per cent to absolutely nothing. He said that an orange properly handled will stand up for any market without refrigeration or without any special care. So that is what Mr. Ripley pointed out when he said the rate was not what was wanted, but still concluded "if they think so, we will let them try the experiment." So the rate was put down in 1902 and 1903 for a term of months, part of the winter. They did the same thing the next winter. In 1904, on the representations of the shippers, that they still needed that assistance, they put the rate in all the year round. They wanted a

[Page 79 of copy not furnished.—PRINTER.]

80 not pay. He said he did not think it would pay the cost of transportation. Mr. Peabody has shown in this case, by a method that has been approved by the courts, notwithstanding criticisms of counsel, that to two points this lemon rate does not pay the cost of handling—Buffalo and New York City—and to other points neither the lemon rate nor the orange rate pay what they should pay, although they pay what is better than nothing.

Mr. Woodford, the manager of the chief plant on this California Fruit Exchange, testified that on the reduction of this rate the lemon growers ceased budding back to oranges. Mr. Chambers' testimony is to the effect that Mr. Powell's method intervened here at this moment and stopped budding back to oranges. I will call attention in a moment to one of their own exhibits showing how rapidly this grew. In 1883 there were 500 acres of lemons; in 1904, 9,000 acres of lemons; in 1909 18,000 acres of lemons. This was a rapid, uniform and remarkable growth all the time. It is stated in the brief that you found in the former hearing that $1 was a proper rate on lemons. That is erroneous; you did not adjudge that. The only thing that the Commission decided upon in that case was the orange rate, with the remark that so far as lemons were con-

81 cerned $1 seemed to be a reasonable rate; but it was not adjudged after a hearing that $1 was a reasonable and proper rate. In addition to the help that was given in this case, when these people were trying to find out what their trouble was our people put in, and the other carriers also put in, a rate to the east so that they could get the fruit out of California to the east and save it in refrigeration and have it ready as soon as the eastern market opens. They predicated the other rate upon that. It was understood when this lemon rate was reduced that some day it would be put back to

$1.25; that is to say, it would go back to the orange rate. The orange rate, in the meantime, went down to $1.15. So the attempt recently to put the two on a parity was to restore the two not to $1.25, but to $1.15.

Of course the real question is whether the rate of $1.15, which we propose, is a reasonable rate. Still you have held, in a number of cases, that if we put in a rate voluntarily and leave it a long while and investments have been made on it, there is a strong presumption in favor of its reasonableness. Therefore I propose to call attention to what the understanding was when that $1.15 rate went into effect. Particularly in the far west, they held town meetings to denounce us and reprobate us in general for our conduct. Mr.
82 Chambers said that all men with whom he talked, and with whom others talked, all shippers, knew at the time and understood that this was to be restored some day, when the traffic would stand it, to an equality with the lemon rate. He said that they had enough trees out now so that in five years they would supply most of the markets in the United States. Those five years passed before the rate was increased. The first reduction was in 1902. He said that when the rate was increased, no man ever suggested that the lemon rate ought to be lower than the orange rate, never gave that as a reason, and no man went on the stand at Los Angeles to say that the lemon rate should be lower than the orange rate, that was never given as a reason. And the statement of Mr. Chambers that it was fully understood that this rate some day would be returned to the orange rate, was not disputed by any of the hundred men to whom reference was made this morning in the court room.

In addition to that, we showed and it appears in the record, that Mr. Woodford, the general manager of this exchange, had signed a letter written August 1, 1907, which is over two years before this tariff was imposed, in which it was said by Mr. Chambers of the Santa Fe Railroad that this lemon rate would go back to the orange rate. In addition to that, I confronted Mr. Woodford with
83 a letter of his own in which, after talking this matter over with Mr. Barnwell, our freight man at Los Angeles, and went in to see Mr. Barnwell and hear this correspondence with Mr. Chambers and Mr. Fraser, Mr. Fraser being one of the largest growers in California, Mr. Barnwell gave him to understand what was coming. That was in November, 1906, almost three years before this tariff that we undertook to snatch away was given and Mr. Woodford went back to his office and wrote a long letter which I read into the record, repeating this tale of hardships which they had been repeating since 1902, and winding up with a statement not to make this increase for the present.

Now it is written all over this record that those men understood that it would come back some day to the rate that it ought to bear, namely, the rate borne by lemons.

The Chairman: Oranges, you mean?

Mr. Norton: Oranges. And in addition to this correspondence which I have put in the record, I say that that is supported absolutely by the profound silence of the hundred men who were in that room,

according to the statement of counsel, not one of whom opened his mouth in contradiction of it. Yet we were pilloried and oppressed at public meetings in California, being accused of trying to gob-
84 ble up these revenues afforded by Congress, and that we never dreamed of before, when as a matter of fact it was under consideration for a year. So much for that.

Another thing. They claim in their complaint, and they set it up in their opening statement, that since the rate was reduced, to a dollar in 1902 and getting an all-the-year-round rate in 1904, that the conditions are just the same as they were then, and Mr. Woodford in this long letter that I tell about, asking us not to put up the rates for the present, tries to show that no conditions have changed. Mr. Chambers testified that the conditions were numerous that had changed, and that in every way the industry was able now to take the rate which it should bear along with the orange. One of the things shown as a change in positions was that this decay had decreased from 25 to 40 per cent down to absolutely nothing. Mr. Woodford said that the decay the year before was one of the heaviest in existence, but you will find by an examination of the testimony that he confounded decay with shrinkage. Mr. Powell, the Government pomologist showed that there is a heavy shrinkage from the watery shell beneath the rind, and that was confused by Mr. Woodford as decay; but they introduced no evidence showing that at the
85 present time there is any appreciable decay.

Mr. Woodford also admitted that we could handle the lemon itself better. I read from what I have denominated in my brief as Powell C, page 360:

"In this case the Government investigator said:

"The handling of the lemon in the packing house is done with more care than is bestowed upon any other orchard fruit crop. The shippers have found from costly experience that the dropping of the fruit or the rough handling of it in any other way, is followed by heavy losses from decay. The injunction to handle the fruit like eggs is kept constantly before the laborers, and this care in handling is constantly practiced in the well-managed packing houses."

So anxious were complainants to impress upon the Commission that this condition of decay had not disappeared that Mr. Woodford said that up to that time the Government had not passed upon the lemon, that it had considered the orange but not the lemon. I call attention to a report on the lemon made in 1907, and they are now compiling another one which was made in 1909.

It appeared also that the Italian lemon is subject to decay as high as 40 per cent.

86 A second changed condition is in the improved quality of the fruit. You have heard it stated that a lemon is always a lemon, and the inference from that is, and it appeared in the testimony—Mr. Woodford said the quality of the lemon had not improved; that the quality had not improved. Mr. Hampton, their own witness, contradicted that. He said that they have more high grades than ever before. Mr. Teague, a witness for the complainant, also a heavy lemon grower, said that the California lemon has some

superiority in quality which commands the highest price. I will get to that presently.

The third change in conditions justifying this rate is the improved method of handling. I have practically gone over that, in which I pointed out that changes made in handling oranges had reduced the decay from 25 to 30 per cent down to nothing. That was due to an improved method in handling.

Mr. Chambers testified also that the railroads are giving better service than ever before. And in your original opinion, or rather in Commissioner Prouty's concurring opinion in the original case, he said if the service that was advertised were given, he would not think it would be proper to reduce the rate of $1.25. Now if in the opinion of the Commission a rate of $1.25 for a good fast service,
was a reasonable rate, we are giving a service now better than
87 Commissioner Prouty referred to and the rate is only $1.15.

Another improved condition is in marketing. Mr. Chambers said that the market is the whole thing, and I will show that—practically the whole thing. He said that after this rate went into effect and the Government's advice was being put in operation, the California Fruit Growers' Exchange really put that into practice and removed the decay and losses.

Mr. Woodford in his report said that during the last four years they had gotten 53 cents a box more for the four preceding years by their better organization, better handling and better management; and he states in the same report that acting as purchasing agent for the people, they saved them a million dollars in the purchase of their goods.

In addition to that, by the methods of handling, the small buyer can buy at auction. A good deal is sold at auction. It appeared that the push cart has since come in—all of these being changed conditions which have led to the greater consumption of this fruit and the more general distribution of it; so much so that Mr. Woodford and others said that it is supplanting the eastern apple, which we know.

A fifth change in conditions referred to by Mr. Chambers
88 was the cutting of the import rate. Before this rate was reduced to $1 in 1902, the import rate from New York into this part of the country was subject to all sorts of discriminations and secret reductions. He testified that since the agitation began for the Hepburn law that that had ceased; so that on the foreign lemon now from the Atlantic seaboard into this western country the rate is as staple as the rate from the Pacific Coast. That was one of the strongest arguments they made to our people when they asked that this rate be reduced, that the import lemon had that advantage over them.

The sixth reason is that the carrier service has improved. I just call attention to that. We make the time now 13 hours, 45 minutes less than eight days, the time named by Commissioner Prouty in the other case.

Commissioner Prouty: You mean that that is your scheduled time?

Mr. Norton: No; that was the average time made during the last year.

Mr. Mayer: The average or selected cars?

Commissioner Lane: That was the average for the year.

Mr. Mayer: I am afraid you have overlooked the exhibit introduced at Chicago, which gave the average for nine months.

89 Mr. Norton: Well, this is our record and I am going to discuss a matter presently which will show just what we have been doing on this.

The seventh change of conditions is the decrease of Italian competition. Last year California furnished 40 per cent, or 12,000 carloads of fruit. That is going some, in the language of the street. 40 per cent or 12,000 carloads. It was stated in the complaint that they needed an increase of the tariff, which Congress gave, in order to exist; but it will appear from an examination of their own brief, I think—if you will look at page 11 of their brief you will see that from 1899 forward there was a rapid and constant increase of the acreage of lemons, that the industry was growing right along, almost as regularly as the orange industry was growing, for which nobody claims any protection was needed.

The orange industry developed 107 per cent and the lemon industry from 1900 and 1901 to 1908 and 1909 developed 325 per cent, as shown by their own tables. Mr. Woodford admitted sales all the year around now of lemons in Cleveland, Buffalo, Detroit, Pittsburg and Columbus. The statement was, and you heard it this morning in the oral argument, that they cannot get into eastern markets at all. Mr. Smith, one of the agents of the Santa Fe

90 Road in New York, was engaged in the reprehensible business of trying to get foreign lemons out as against California lemons, and he testified that the California lemon brings a better price in New York at the best hotels, and he put in a table which shows the constant decrease in the importation in New York and the constant increase of the California lemon in that same port.

If you will please look at our map opposite page 36 of the brief, I have taken the trouble to take the exhibit of Auditor Healey, and that will show you just where the California lemon goes. That map shows the groups of the transcontinental tariffs and the number of carloads of lemons that went from the Santa Fe into those groups. Group A, as you are aware, is New York pier. Nothing comes there. Group B is New England. Group C is the largest; 1224 carloards of lemons being put into that group by the Santa Fe last year. That is the largest number going to any place, that territory including New York, New Jersey, Pennsylvania, Maryland, Ohio, Indiana and a part of Michigan. So they are putting their business into this country which they say they cannot reach. That confirms the statement made by Mr. Powell of the Government service, namely that the California lemon finds its best market west of the Mississippi River, and that west of the river the demand has grown just

91 about as rapidly as the industry has developed. Therefore the result is that the California lemons do not go into the eastern territory, because they haven't the quantity, and when they

do have the quantity they go to New York and command a higher price there than the Italian lemon. The testimony is that it is a better lemon, honestly put up, and they know about the size of it and what they are getting, they know the package and they rely on it. That is another change of conditions justifying an increase of the rate.

The eighth change in conditions is the prosperity of this lemon industry. They have put out 3,000 acres of lemon orchards in three years. Mr. Chase of Riverside budded over a hundred acres of his oranges to lemons. He is one of the greatest growers of oranges in California. He has 1500 acres, I think, in the Riverside District. He has repeatedly put out a hundred acres by budding, converting one orchard into another.

I have already shown that since 1900 and 1901 the acreage has increased 325 per cent.

Mr. Hampton, a witness for the complainant, this special witness that they used and whose testimony I have commented upon, undertook to show a very low production, a very low productivity
92 of lemons in California. He took the record of the state board of equalization as to the bearing trees in the state, and then he took the number of carloads that the carriers sent out of California. Well, in the first place Mr. Hayden, a witness for the defendants, consulted with the chairman of the state board of equalization as to the value of those records and he pointed out what I proved by an exhibit in the record, namely that that statistical information returned by the assessors is absolutely worthless. To illustrate, Mr. Hayden pointed out that in the report of the state board of equalization, no non-bearing lemons were shown in San Bernardino County and no non-bearing lemons were shown in Los Angeles County. That is to say that the entire acreage was read off as being lemons. And he took all that acreage, including grazing and all, and divided that into the number of carloads that the carriers sent out, omitting home consumption, the consumption of the north and in Canada and the heavy consumption of lemons in the Rocky Mountain region, which goes as mixed carloads and are called oranges, into those small consuming localities they go as oranges, and by that division he accomplished the result which was so amazing to learn. He asked Mr. Hampton how he could explain that these people according to the tonnage per acre produced
93 were making no money at all and supporting themselves and putting out 3,000 acres of new lemons in the last three years, and he could not answer it. That was hard. That is the testimony, I say, which caused me to invoke the presumption guaranteed to us by the statute of California.

It was shown that Mr. Flagler makes three-quarters of a car to the acre. That is the equivalent, in the prices given, to 6 per cent on $5,000 an acre. I am going to give you a few pictures a little later, but the testimony is that it takes $90 to make an acre, and having made an acre it immediately yields 6 per cent on from two thousand to $8,000 an acre, and that is what talks.

Commissioner Prouty: That depends on how much he gets for his lemons?

Mr. Norton: I am going to show that from his own records. Mr. Joseph H. Call read to you a while ago what they got in certain parts of the United States; but we have it from their own reports. They gave us their reports and we found that on the lemons sold for five years they turned over to the growers 2.59. On oranges for five years they turned over to the growers 1.885. You can take those figures as shown by their annual reports and take any man's tonnage per acre and figure it out for yourselves.

94 Commissioner Prouty: I understood, Mr. Norton, that they could not give the figures as to lemons, except for the last two years, and for the last two years the figures were about $2 a box.

Mr. Norton: We have got the association reports.

Commissioner Prouty: As I understand it, you took the reports of the subsidiary associations.

Mr. Norton: We took the reports of the payer to the payee, the association that paid the money to the farmer, and that is what it shows.

Mr. Mayer: What was the last figure?

Mr. Norton: For five years, $2.59 for lemons; and the orange, $1.885.

Commissioner Prouty: You computed that from the reports of the subsidiary associations, the smaller associations, turned over to you?

Mr. Norton: Yes. There is no Hampton computation about this. You can take the tonnage.

Commissioner Prouty: Are those association reports filed in the case?

Mr. Norton: I think they are. I think Mr. Call filed everything I asked for. I think they are all here. Mr. Hayden testi-

95 fied from those and Mr. Hayden testified also that he went around among the representative growers and covered the entire lemon country, and they gave him to understand that a good, well cared for orchard, cared for in the proper way, would yield a carload of lemons, and that an orchard less well cared for would yield about three-quarters of a car load.

The Chairman: That is, to the acre?

Mr. Norton: Yes, to the acre. Mr. Powell, the Government expert, found the same thing. I refer you to Powell C, 356. His investigation led to the same thing. You take three-quarters of a carload to the acre and take these figures I have given you and you will find out that this business which costs us $900 is made into an acre which will sell for $2,000, from $2,000 up, and that it will yield 6 per cent on from $2,000 to $8,000. We do not need to go that far.

Mr. Asa F. Call: You want to be fair about it, and you know Mr. Powell said that it was only those selected acres that would yield a car and that the average would only be half a car. Those association reports you called for were selected; they were selected from a few associations and out of those the best.

Mr. Norton: No, we took them all. I turned them over to
96 Mr. Hayden and told him to make his computations as to what money had gone into the pockets of the farmers. None of our calculations are based upon a carload. We took the lowest. We took for oranges Mr. Chase's low estimate, the lowest productivity in California, and showed a really good earning. When people can invest $900 or $1000 in an acre and then capitalize it so as to yield 6 per cent on several thousand dollars, what right have they to talk to us about watered stock? They have the right to make that earning of course, but that very circumstance illustrates the absurdity of a great deal of talk that goes on about watered stock. Their stock is watered and they have a right to do it, they have a right to this profit, but I point this out to show that this industry has prospered and is able to pay the rate.

Complainants show in 1907, 1,097,000 boxes of lemons; in 1908, 1,585,000 boxes of lemons; and in 1909, 2,000,000 boxes. That is mentioned to show the rapidity of the increase. Mr. Chase has 200 acres of lemons and he thinks it is good business. Mr. Chase's judgment is very valuable. He was one of the first men to put into practice the suggestions of the Government and he got instant and complete results and, as I say, he has 200 acres of lemons now out.

97 A reference was made to the age of the tree. The testimony is that the older the tree the better it is. They have trees there now twenty-five years old. Mr. Chase testified that as to oranges also a good old tree has a fine quality of fruit and heavier yields.

Mr. Hampton testified that some of the trees under his charge are twenty-five years old.

Mr. Flagler testified that his trees were twelve to fifteen years old.

Mr. Teague's trees are seventeen years old. Mr. Teague said it cost him $900 to make an acre. $2.59 per hundred on that, the average, five years, equals $518 per acre of 250 boxes. I am taking a single acre for this computation, nothing select. 250 boxes. Taking out of that $215, Mr. Hampton's estimate of the actual cost, and we have $303 left, which gives Mr. Teague 6 per cent on $5,050. That is the lemon industry. So much for the improved condition.

The ninth changed condition to which I refer is the Congressional tariff. A good deal was said about our conduct in that case. The long and short of that is that once upon a time when they claimed to be in distress, and Mr. Ripley did not believe they were
98 in distress, he nevertheless gave it to them and gave them a protective tariff when they could not get it from the Government. So far as the Government was concerned, they were left to perish if need be, and these defendants gave them a protective tariff against the Italian lemon. Now, they having gotten the protective tariff against the Italian lemon, why are not we entitled to get back the rate we gave them for that protection? I leave the fairness and the justness to you.

Mr. Asa F. Call: It is a fact, is it not, that 40 per cent of the lemon orchards were destroyed under that rate?

Mr. Norton: No; it shows an absolute increase of acreage, on page 21.

Mr. Mayer: It shows it was stationary from 1900 to 1904.

Mr. Asa F. Call: It shows a decrease of acreage from 15,000 to 9,000.

Mr. Norton: No. There was some budding back, but this Mr. Hampton, their expert, when I challenged him to name one man who had budded lemons back to oranges could not name one man. As I say, there was some budding back because they were in land that was not lemon land and other reasons; but when I challenged him to name a man he would not name one man, although he started out bravely to say that they had been budded back to
99 oranges. We looked that up and we know it, and Mr. Woodford himself found that in every instance, where there was budding back, it was a question of frost cutting a figure.

I say I leave that tariff matter to the judgment of any fair-minded man. We are not afraid to leave that question to the judgment of any fair-minded man.

Mr. Joseph H. Call: What do you claim on it, that you are entitled to this tariff?

Mr. Norton: I claim we have not taken the tariff. We have simply put this tariff back to a parity with the orange rate when the industry could stand it. The increase is only 15 cents a hundred and you have got 50 cents.

As I have pointed out, so far as the proposed lemon rate is concerned, it is admitted that was an emergency rate and was not a reasonable rate, and we have put it down to bed rock, as they showed before Congress. Therefore it is not a proper rate.

According to Mr. Teague's testimony—and he is not a producer either, having only 250 boxes—we took the smallest figure he gave to the acre, and he with an investment of $900 capitalizes that and draws interest at 6 per cent on $5,050.

That is the lemon industry. Now I come to the orange.

Mr. Joseph H. Call: You concede that Mr. Chase is the best
100 lemon man in the world.

Mr. Norton: I do not claim that they will all do that well, but we have made other comparisons in our brief. I say when a man invests $900 and can draw interest on $1500 or $2,000, he is doing well. But I gave you that statement of Mr. Teague's.

Commissioner Lane: Have you any computations in your briefs based on a census of those association reports?

Mr. Norton: Only according to Mr. Hayden's testimony; I have not near so much as I wanted to have. Mr. Hayden was checked in his testimony, because what he was saying was ruled as not very good, and I wanted to show a number of things of that sort and I would like to make some further computations if you want them. We got those reports and we have got the goods on the subject.

Mr. Mayer: They would not let us cross examine the witness. The testimony was regarded as so utterly improbable and useless——

Mr. Joseph H. Call: We had a hundred of those associations; they only called for a few.

Commissioner Prouty: The fact as I remember it was this. The testimony shows that the receipts for the last two years—which were the only two years for which the association could give
101 the figures—were about——

Mr. Norton (Interrupting): The exchange.

Commissioner Prouty: I call it the association, whatever the name is, which handles the citrus fruit for the fruit growers of California. (Continuing)—was a trifle over $2 a box. Now, you asked that the individual associations should pass over their reports to their stockholders and they were directed to do so, and they did file a number of those reports. I now understand you to say that an analysis of those reports shows that the price received for the last five years was 2.59.

Mr. Norton: 2.59, f. o. b., yes.

Commissioner Prouty: Now I ask you if those reports are on file in the record, so that the Commission can look at them?

Mr. Norton: I think they are.

Commissioner Prouty: They ought to be.

Mr. Norton: And if not, I will send them. I will see that they are. Come to think about it, I think they lent them to us and we gave them back.

Commissioner Prouty: I had that impression, that they were not filed. The documents from which those computations have been made, if we are to rely upon the computations, should be filed in this record so that they can be verified.

102 Mr. Joseph H. Call: We will be glad to furnish them anything they want, file it now or any other time. The point I wanted to have clear was that there are a hundred of these associations embraced in the general report which we gave, and it would not be fair to us to take those that received the highest amounts and it would not be fair to them to take those that received the lowest.

Mr. Norton: We took all they gave us. They didn't give us all we asked for. We took all they gave and made these computations.

Mr. Joseph H. Call: When you got five or six, it seemed to be all you wanted.

Mr. Norton: No. My recollection is now they asked us to give them back. We haven't copies of them.

Now I come to the orange——

Commissioner Prouty: There is no testimony in this case which shows that the average price received for lemons for the last five years is 2.59.

Mr. Norton: Oh, yes; Mr. Hayden testified to that from these facts in his hands, from these papers, and you will find it referred to, every statement, and every part of the statement in my brief has the page citations. You will find it there.

103 Mr. Joseph H. Call: This man Hayden, you know, was some agent of theirs. He testified from hearsay and we were not allowed to cross examine him.

Mr. Norton: He testified just as Mr. Hampton did. Mr. Hayden

is our industrial agent, a buyer of land, and he knows this business thoroughly. He is an absolutely conscientious and able man and he has got to the heart of this thing here.

Now it was said in the old orange case—I refer to that although it must be admitted that the investigation of the case at that time could not have been so thorough as at this time, because of the lack of information at that time compared with the information that was accessible at this last hearing. That is to say, what you found in those days, long ago, would not be so accurate as the finding at the present time. It appears that they are highly organized now and keep books and keep them down to the fraction of a penny. So when you come to compare the cost per acre in that old case with the cost per acre now, I don't think the comparison is of very much value. That was a good while ago and the methods of those people and the methods of our people have entirely changed for the better. But it was said in that case that the original rate of 1.25 was a competitive rate, a rate put in by the carriers to get this fruit
104 into the east, make a place for it, and that therefore that competitive rate was not the proper basis of measuring what the rate should be then. That is still true. The rate of 1.25 has gone down. If that was a competitive rate to give this California orange the markets of the country, as it did—it was stated by Commissioner Prouty and also by Commissioner Knapp that it had wiped the foreign orange off this continent and has also confined the Florida orange. That was a highly competitive rate then and 1.15 today is much more so. So if the Commission in those days would not have cut the 1.25 rate it seems to me that at the present time we might argue that we are entitled to an increase of it.

Now I am going to slur over a number of things. I want the Commissioners to read our brief; I cannot go over all this.

So much for the cost of the service. Mr. Peabody makes the showing which is commented on by them here as doing something outrageous, and he took pains to show that this service does not yield the revenue it should. And Commissioner Prouty remarked during the trial, it ought not to be assumed that the railroads were carrying this business at a loss. I think that may be assumed. I know the records of the country show that 90 per cent go
105 into business at a loss, and they give rebates to get losing business. I could illustrate that by the apartment house where I live. Two apartments in the building were left vacant, and they were finally rented at $10 less than I was paying. I kicked. The manager said "That is none of your concern." He said "It is better for me to get $40 if I cannot get fifty"—and he had not only cut that but he had offered to pay the moving expenses of the two families that went in there. That is done in business every day. Moreover, as Mr. Peabody testified, a great many traffic men go after traffic and get it when it doesn't pay. They had better not have it. So that what was done in former days is not to be a measure of what ought to be arranged today.

I have already said enough about the value of this service. I want to say, in addition, after having put the competitive orange

off this continent and gone to Canada and England, they are maintaining now in London an agency, after all of that it seems to me if we considered the value of the service to the industry, this rate is extremely low. Among the instruments of value are the telegrams, the diversions we give them, and this postage stamp rate is not applied to any other traffic, and neither are the diversions.

106 While there are postage stamp rates, the Florida orange does not have it. In the old case it appeared that the diversion was invented for the California orange. We paid at commercial rates, estimating the telegrams we sent last year to divert this fruit, $57,268.35, in commercial rates. We did not pay that much money, but we gave that value. They would have had to pay that money if they had done their own diverting.

Mr. Mayer: Don't you allow the same privilege of diverting to others?

Mr. Norton: Yes, to some of them, but they don't need it. That is what has made this business. They started our tramp cars and didn't know where they were going.

Mr. Mayer: Didn't it increase your traffic?

Mr. Norton: Oh, certainly. We are brothers in this business, we admit that. Defendant's Exhibit 50 shows increased cost of material to be: Ties 26 per cent; coal 15 per cent; lumber 16 per cent; cars, 32 per cent; fuel, 265 per cent—oil.

I mention that in a running way to counteract what they said about their increased costs.

About the empty movements. The movement west through Seligman is 12,932 loaded and 6,531 empties. Our coast line empty movement is 31.53 per cent. At many times in the year we cannot

107 stop for loads. Besides that, there are a great many commodities that cannot be put into those cars. They injure them or scent them.

Speaking of the 3 cents a mile to which Mr. Joseph Call referred, Commissioner Prouty reminded me not to forget it. That does not include the fixed charged for maintenance or any of the standing expenses. That is shown in our brief.

A good deal has been said in the brief of complainant, and it came up at the hearing, to the effect that this business is handled by us in solid train loads, and so much reliance is placed on that assumption that we were ordered to make a showing.

On page 74 of our brief, opposite page 74 of our brief, we take the largest train that moved out of San Bernardino after the census was made up. We show it contained 56 cars to Barstow; that at Barstow it was broken into two trains, 39 citrus cars, a solid train, and 17 citrus and 24 other cars in the other, making forty-one. That at Needles it was broken into four trains and it remained in four trains until it got to Gallup; and that it got into Chicago in four trains. I think only 31 of the 56 cars arrived at Chicago and they got there in four different trains. So that exhibit does away

108 completely with all the talk, which is frequent and frequent and frequent throughout the brief notwithstanding the showing that we are hauling solid trains of citrus fruit from origin to destination.

Mr. Joseph H. Call: But you could if you wanted to?

Mr. Norton: No.

Mr. Joseph H. Call: There are cars enough.

Mr. Norton: Well, I think we are operating our railroad as well as any outsider could. Of course we don't know much about running it——

Mr. Joseph H. Call: But you could do that.

Mr. Norton: I have said all I care to on the condition of the orange industry and Commissioner Prouty suggested I omit the precooling. I have a great deal about the cost of ice——

Commissioner Prouty: I think that will have to be discussed later.

Mr. Norton: I will go by that. We have it quite well considered in our brief.

We show by Mr. Peabody that if anybody can find out the cost of moving lemons or any other kind of traffic as nearly as it can be ascertained, he showed that this is not a sufficiently remunerative business. Of course we take the position that nobody
109 knows exactly what the cost is, and therefore when counsel claim we are entitled to 6 per cent, that is something that is not obtainable. We think in addition to the cost there should be considered the value of the service to the business.

I have already commented at considerable length upon the value of both of these rates to the business. The cost of service does not enter into the reduction of this rate. President Ripley said it would not pay the cost of the service. If cost should not enter into the reduction of it why should cost be the all controlling factor when we come to put it up to the orange rate?

The contention is made in the brief of complainant—I want to review that a little,—that the Santa Fe is earning a large amount of money. Of course our position is that if this rate is reasonable to them, is properly payable, it does not make any difference how much money we earn, that that is not a reason for reducing the rates. But if, as I have shown, the earnings of the respective parties were to determine the question, then I submit that they are making infinitely more on their investment than we are on ours. Of course our position is that the amount of money we make has nothing to do with the case, provided we are giving them a good
110 service at a reasonable rate, measured in part by the cost of the service but largely by the value of the service to them. We have earned only 4.66 per cent on the money put into this property, as shown by one of Mr. Peabody's exhibits since this road was organized in 1896. Those people, if earnings are to determine, have done infinitely better than we have. In the New York Gas Company case it was held that the company was entitled to 6 per cent return on the money invested. If a company like that is entitled to 6 per cent, what about the Salt Lake Road, which will now have to spend eight or nine million dollars to replace its plant. If that is kept down to a 6 per cent basis it could not rebuild and it would not have the money to rebuild and it would not be able under

such restrictions ever to follow it to rebuild. But that kind of argument it seems to me would put the carriers out of business.

At page 85, they show a lot of commodities hauled by us on a blanket rate from the coast, that are lower than the rate on citrus fruit. They put in these tables fifty-seven rates on articles which we carried and one hundred and twenty-three in the table that never moved over our rails. One hundred and twenty-three never moved over our rails. Some of these rates also took locals
111 east of Chicago. But we have shown in addition to that a list here that may be introduced in evidence if you want it.

Mr. Joseph H. Call: Taken from the joint tariffs?

Mr. Norton: They are paper rates. We have upwards of a dozen rates running from 1.25 to 1.75, blanket rates out of California. This is sufficient answer to the contention that everything out of California is lower than we send it. I should like to have you bear that in mind.

Reference is made to the 1500 miles of desert. They say they are separated from the consuming road by 1500 miles of desert. That is a great- impediment to us than to them. We have to maintain that road and make interest on the investment. Anyway, as shown by your former decision, I think we have overcome the impediment of the desert so far as a common carrier ought to do it.

They refer in the brief to earnings per car. That means that a car on 200 miles should get as much as the car moving 2,000 miles. I wish to call attention to that. They show what enormous earnings per car we get. Of course hauling so many miles, we ought to get some money out of that car.

Page 128 of the brief, they also misuse the term "conducting transportation." That will be so long I will leave you to
112 read our comments upon the figures they set out, disregarding changes in accounting that you have prescribed since they first got into this subject.

We also deal with dead weight, and a large part of their brief or a good part of it is taken up with a quotation from the Cattle Raisers' case, criticising Mr. Peabody. I wish to say that the methods employed by Mr. Peabody in that case have been twice followed and three times approved by the circuit courts of the United States.

On the question of refrigeration I have nothing to say.

My proposition is that the lemon rate should be what the orange rate is, and we have shown nine changes of condition that justify us in putting the rate back where it was when they asked us to put it on an equality with the lemon. We are desiring to put it back to 1.15, whereas it was the expectation some day to go back to 1.25. Our contention is from the showing in the old case and in this case both together, that it is manifest that the rate on oranges is one of the lowest in the country, and I think without exception the most serviceable.

Commissioner Prouty: What circuit courts have followed and approved that——

Mr. Norton: The Circuit Court of Missouri in the Mis-
113 souri rate case; the Circuit Court of the United States in the Oklahoma case; and the same method was employed in the Arkansas rate case.

Commissioner Prouty: In the Arkansas case the court assumed that the cost of handling state traffic was twice as great as the cost of handling interstate traffic, and Mr. Peabody assumed as the foundation of his computation that the cost of handling all traffic is the same.

Mr. Norton: The computation here?

Commissioner Prouty: Yes.

Mr. Norton: I do not so understand it.

Commissioner Prouty: It was so testified.

Mr. Norton: Mr. Peabody's computation was the cost of handling the state traffic as against the interstate, and it was not only accepted but he was complimented for his work in handling the interstate rate.

Argument of Mr. C. W. Durbrow, on Behalf of the Defendants.

Mr. Durbrow: Some facts stand out prominently in Mr. Norton's argument to you gentlemen. The first is that this is an expensive service for the carriers to perform; and, second, that it has resulted
in great advantage to the shippers, and by the rates that are
114 complained of here, and under those rates they have built up one of the greatest industries in the United States.

The first point that must have struck your Honors with some force is this: That this producing section where this perishable commodity is grown is situated in the southwestern corner of the United States, in that territory where the ladies hide their silk dresses when they see a railroad train coming—this newly discovered home for the aged. That the markets into which this product is distributed, are found principally east of the Mississippi River, as far to the northeast as Boston and into all parts of Maine, a distance of 3200 miles from the point where the commodity is produced. That the average haul of this commodity, as found by the Commission in the previous cases, and as conceded by the complainant in the case at bar, is 2500 miles. And in that connection I want your Honors to bear in mind, when we come to consider the sompetitive features of this case, that the average distance from which the Florida oranges are hauled to the markets is 1250 miles, exactly one-half the distance the California oranges are hauled. I want you also to bear in mind that this traffic is hauled these great
distances over a territory where the complainants say we
115 meet a desert for one thousand miles, where the track is maintained as a bridge, to transport the commodities from the east to the west and from the west to the east and where no traffic is offered to the railroad or where no traffic is laid down by them.

I want your Honors to also bear in mind, as a second proposition, that this rate was established as it is today upon a competitive

basis, because I think that is an important matter for your Honors to consider when you come to determine the issues here. In 1888 the rate was first extended to Chicago upon the 1.25 basis. Prior to that, according to the testimony, the complainants were paying 6.50 to land a carload of this commodity in New York. The rate to St. Louis was 1.40 a hundred and to Chicago 1.50 a hundred. As the industry grew, and as the territory was necessarily widened in order to enable these shippers to distribute their commodity and find a market for the commodity that they were raising, the rate was reduced by the carriers from 1.50 to Chicago to 1.25. And, your Honors, when it was found that this was growing so that it was necessary for the shippers to distribute their commodity into a greater area, what did the carriers do in 1894? They applied the rate of 1.25 as a blanket rate from New York west, back as
116 far as Salt Lake City. Why did they extend the distributive area? Why did they make this blanket rate of 1.25 into this territory, and why did they likewise blanket the rate in the west, not as they did in Florida as a local charge, but blanket it in the west from San Diego on the south to Oroville and Placerville on the north, about 600 miles? They did that because the shippers came to them and said, "Mr. Carrier, I find that my product now may reach Chicago, I can distribute into the Missouri River territory, but I find competition further east; I cannot get into Chicago on the 1.50 rate and the local added, when those shipments move further east." What competition did they find? They found the competition of the Sicilian lemons moving here by water transportation into New York and moved inland by the carriers without any published tariff rate, which did not enable the shippers there in the west to determine what their competitors were paying as transportation charges. They found the oranges coming from Mediterranean ports into New York and being distributed west in like manner; they found oranges being grown in Cuba and Porto Rico; they found oranges being grown in Florida and shipped by sea up to New York, Baltimore and Boston, and the carriers made a rate of 1.25 a hundred blanketed from New York to the west
117 and blanketed in the producing territory to meet the competition of which I have spoken.

That was how this 1.25 rate was first put into effect by the carriers in 1894. And at that time I wish your Honors to bear in mind that the tariff duty was only 50 cents a hundred on oranges and lemons.

And I want you to bear in mind when you read this brief that all the exhibits of the complainants as well as of the defendants, disclose the greatest development of the orange industry was at a time when the rate was 1.25.

The duty on oranges and lemons was increased to $1 a hundred weight in 1897. In 1907, the orange rate was voluntarily reduced by the carriers to 1.15 per hundred, the rate being blanketed as it is at present. In 1902—prior to that time—the lemon industry had complained of the 1.25 rate and had asked the carriers to make the rate $1 to overcome the disabilities under which they were

suffering at that time, which have been enlarged upon by Mr. Norton, and the carriers undertook to make a rate of $1 a hundred at that time, to afford the lemon shippers the relief which they said was necessary in order that they might meet this competition of the Sicilian lemons, and in order that they might overcome the disability, which you should not forget, of the frost blight that
118 had overtaken them because they had not planted their lemon groves in the territory where they would thrive.

So your Honors, when you come to consider this case, must keep in mind, first, the great distances that these commodities are hauled; and, secondly, that the rates were originally established upon a competitive basis, and that these rates have been steadily reduced by the carriers voluntarily, until we have a rate of 1.15 today applying upon both lemons and oranges.

Mr. Norton had something to say here about the burden of proof. I also want to say a word with reference to the burden of proof, because I feel that so far as the evidence in this case goes, that if we had been before a court of law we could have asked the court to nonsuit these complainants because they had not made out a case which would entitle them to affirmative relief.

It has been decided by the Supreme Court of the United States in the case of Illinois Central Railroad vs. I. C. C., 296 U. S., a recent decision, that in cases such as this the burden must be on the complainant. As your Honors well know, because it was so held in the case of Memphis Cotton Oil Company, 17 I. C. C. Reports, where a rate has been reduced to meet a competitive condition or to enable the shippers to overcome some disability, it may be again
119 restored by the carriers without any burden falling upon them to justify the advance of the rate, if for no other reason because your Honors have determined in the Lindsay Case, 16 I. C. C., p. 16, that the carriers may meet competition by sea or rail, and having chosen to do so, as they have here, and established these competitive rates, they may at their election continue that rate in effect as long as they wish, and that competitive rate is not the measure of determining the reasonableness of a rate, as your Honors held in the Burnham-Hanna-Munger Case and the Florida case and in the Consolidated Forwarding case, and in I. C. C. 9, page 406, "rates may be advanced when the disabilities under which shippers suffer, or the competitive conditions, have been removed."

Now, we say to your Honors that the burden of proof is upon the complainant, but we do not stand before your Honors here asking you to indulge any presumption here which will make against the complainants. We do not wish to be unduly technical, because we believe that the rates here, measured by all known tests, are demonstrated to be reasonable and proper.

And also when the question of competition is considered, your Honors may be somewhat surprised to learn that not only the carriers but the shippers and the carriers' counsel are agreed
120 that we have reached the lowest basis, or bed rock, in the establishment of the present rate. Mr. Chambers testified that in his opinion the rate was an extremely low rate, and comparing it

with other rates, he based his opinion upon the well known principles of rate making, and I believe that when you come to consider that testimony you will find that Mr. Chambers' testimony is practically conclusive.

But we are not going to rest with Mr. Chambers' testimony, because we have the testimony of Mr. Phillips, the next largest shipper of this exchange, an organization out there in California, and Mr. Phillips testified that he didn't know of any reason why there should be any difference in the orange and lemon rates. Counsel for the complainant in this very case here also entertains a like opinion and so testified under oath and told the Congress of the United States that that was a fact when he appeared before them to obtain this increased duty. I want to read a page of the testimony, page 922 of the transcript, where is quoted the testimony given by Mr. Call before that committee.

"The Chairman: How does the freight rate compare with the rate in 1907?

Mr. Call: On our orange business it is ten cents per 100 pounds, and on lemons it is 25 cents per 100 pounds less. The railroads came to the rescue of the lemon industry to some extent, as
121 much as they could, because it was going down."

And on page 399 the question was asked of Mr. Call:

"Have you not tried to get it reduced?

"Mr. Call: We had hearings before the Interstate Commerce Commission when it was $1.25, and they ordered testimony to be taken, and the railroads gave us a reduction. Now we have 2,300 miles haul and their rate is less than a cent per ton per mile. The cars are expensively built, and they have to haul them back empty a part of the time. I doubt if they are not now pretty close to bedrock on that proposition."

122 Mr. Mayer: What duty was he talking about?

Mr. Durbrow: Oranges.

Mr. Mayer: He was talking about lemons.

Mr. Durbrow: No.

Mr. Mayer: He was trying to get an increased tariff.

Mr. Durbrow: Now if your Honors please, Commissioner Prouty has suggested that we not consider the refrigeration charge, and it will probably not be necessary to do so, but I do want to say that so far as the rate itself is concerned we have not endeavored to charge that rate with any transportation of ice. This business as it developed required the carriers to provide refrigeration. They undertook to do so because it had been shown that they could transport the shipments across the continent in better condition, and instead of making an aggregate charge covering the refrigeration rate as they do on shipments of packing house products coming from Missouri River territory or where these commodities are produced west, they segregated the refrigeration charge from the rate itself, and the only items that go to make the charge additional so far as refrigeration is concerned, is just the cost of the ice itself, which is the principal charge—the transportation of the ice and the additional

switching which is necessary to the separation of that par-
123 ticular branch of the business. And in considering the reasonableness of the rate, I shall leave out of consideration all of those features which are properly chargeable to the refrigeration end of the business. I think your Honors will find that the service is expensive to the carriers and is valuable to the shippers; and, because it has not in the past met with the Commission's approval, I shall not attempt and have not in my brief attempted to apportion operating expenses to particular items of traffic to determine the cost of transporting these shipments from California territory to the eastern destinations, but I do want to call attention of the Commission to some factors which enter into the cost of performing this service and which necessarily must increase the expense of performing the service by the carriers.

The first is the equipment. It is much more expensive than its first cost, and much more expensive to maintain. Mr. Yates testified it was three times as much as ordinary equipment. The capacity of the refrigerator equipment is only 88 per cent of an ordinary box car. It loads, according to the finding of the Commission in the Consolidated Forwarding case, only 35 per cent of the cubical capacity of the car.

Commissioner Prouty: Now Mr. Durbrow, I don't know
124 how it is with your company but the refrigerator car company of the Santa Fe keeps these cars in repair for three-quarters of a cent a mile. Formerly the exchange rate between carriers was six-tenths of one cent per mile for ordinary box cars. It was claimed it did not pay the expense of the upkeep, and for that reason a different scale was arranged. Now if you can in this case for three-quarters of a cent a mile furnish and keep these cars in order, why should you be allowed an additional rate by way of the freight rate, for the reason that you have furnished refrigerator cars?

Mr. Durbrow: I will be glad to answer that. So far as the Southern Pacific is concerned, we may look at it from two standpoints: first, that we furnish them ourselves, because the express company being controlled by the Southern and the Union Pacific, you might consider the Pacific Fruit Express the refrigerator branch of the service, and whether that money is paid out of the Pacific Fruit Express and turned back into the Southern Pacific amounts simply to a question of bookkeeping. But let us look at it from the other standpoint, the standpoint suggested by your Honor. Let us look at it from the standpoint of the carriers undertaking the expense of furnishing this more expensive equipment themselves. I
125 understand, if my recollection is right, that the ordinary mileage made by a box car in a day is twenty-five miles, and I understand that the charge usually imposed by foreign lines under the Master Car Builders' Association rules is but 25 cents per diem, which would be a cent a mile for your box cars. I will say to your Honors that because of the peculiar nature of this service we are obliged to pay three-quarters of a cent a mile for these cars when they move 75 per cent of their return distance, and I will show

your honors that they do not cover the same distance in a year as a box car. For that reason I say that the expense of the refrigerator equipment, whether you consider the carriers paying three-quarters of a cent a mile or consider the additional expense as I am considering it here, taking its cubical capacity, its capacity compared to gross, just as though the carrier owned the equipment itself, amounts to practically the same consideration; and I don't want you to believe for a moment that the Southern Pacific in addition to paying the three-quarters of a cent are to have this additional expense here of providing this more expensive equipment or maintaining this more expensive equipment; but I was arguing as though the Southern Pacific owned this equipment themselves and supplied it themselves and performed this service themselves.

Commissioner Prouty: But my thought is this: That the
126 long haul of this traffic is such that you can handle it cheaper than ordinary traffic. Take ordinary traffic. The car stands in the yard a large portion of the time, it is knocked about and shifted in the yard, and broken up in the yard; perhaps more damage is done to cars in the yard than on the line. Now here you have a haul from one side of the continent to the other. You keep your cars in more continuous service than you do in the case of the ordinary box car, and while the equipment is more expensive, it is no more expensive to furnish a refrigerator car for this service than it is to furnish a box car for ordinary service.

Mr. Durbrow: Well, I think it is.

Commissioner Prouty: Well, that is the point to which I call your attention.

Mr. Durbrow: You will find in the first instance, by an examination of our exhibits, a large number of idle car days chargeable to the Pacific Fruit Express equipment because it is necessary to assemble this equipment out there and provide for contingencies, because the record shows that by the improved methods of handling their commodity may be stored, the lemons may be stored for six months and they may allow their oranges to remain on the trees until they
127 find they have a market, until the demand for them is good. That is the first thing. We show a large number of empty cars chargeable to this service which are held at the gateway each month of the year and each day of the year. We are also obliged to charge ourselves with additional expense in providing equipment because the evidence disclosed that because of the diversion privilege we lose five car days on an average for every car that is diverted. I was arguing along the line as though the Southern Pacific Company through this branch of its organization was providing this service itself. I think we can justify the three-quarters of a cent a mile for the Pacific Fruit Express, and I will be glad to present some argument along that line. But I was assuming in a general way, because I did not pay much attention to this branch of the case, to point out in a general way the additional expense of our equipment.

Mr. Joseph H. Call: May I interrupt you?

Mr. Durbrow: I would be delighted to answer any questions if you would take it out of your time.

Mr. Joseph H. Call: I answered your questions this morning. I would like to ask this: Whether the record does not show that these cars make about sixty miles a day.

Mr. Durbrow: That is shown. According to your brief—I
128 was rather surprised to find that they moved about twice as fast as the ordinary box cars, notwithstanding the time they are held for diversion.

Mr. Norton has spoken to you about the expedited service at the Chicago yards. Counsel announced that the service was entirely satisfactory. I want to impress upon your mind that the shipments arrive at Chicago on the morning of the eighth day. That is, they leave there in the night time and they are delivered at Chicago in the morning. It takes seven and a half days to make the transit as disclosed by the statement of the Southern Pacific. Now, there is no necessity of getting that car in there in seven days, because it would land there in the evening or night time and the markets are not open until the morning, and the shippers would not take the delivery of their cars until the next morning. The record shows that the shippers do not take delivery within the 48 hours' free time allowed, but pay demurrage. I want to impress upon the Commission that we have measured up to the standard set by them and that the cars are delivered on the morning of the eighth day and with great regularity, as the exhibits disclose.

As far as the Pacific Fruit Express Company is concerned, we find
129 that 75 per cent of the cars are returned empty. This is from a two years' test from the records of the Pacific Fruit Express Company, and that showing is made by the exhibit which we have introduced.

Mr. Mayer: Where was that; was that at Seligman, or at Ogden?

Mr. Durbrow: The empty movement was taken at the gateways; at Ogden, El Paso and Portland, as is shown by the exhibits—I think I am right.

Mr. Mayer: Were any of those empty cars loaded before they got to the gateways?

Mr. Durbrow: No, they do not load them in transit.

Mr. Mayer: I mean west-bound freight. They were west-bound?

Mr. Durbrow: West-bound cars, but I say that of all the cars that move from point of origin to the gateways empty, they average 75 per cent.

Mr. Mayer: Would not the best test have been the mileage?

Commissioner Prouty: The percentage on the Santa Fe of loaded cars is much greater than on the Southern Pacific, as I remember it.

Mr. Durbrow: That is accounted for by the fact that their line extends into Chicago and they load their own equipment. The Southern-Pacific has to move empties west-bound very often,
130 to supply the needs of the shippers when the heavy season is on. The principal reason that the cars move forward on this great percentage of empty loads is because the character of the car is such that we cannot load the ordinary shipments into a car, either because of the damage to the contents on account of damages—and the doors of the cars must be constructed as small as possible in order

to provide the greatest insulation possible. And a great deal of time, as I have stated, is lost because of the necessity of holding these cars out here to meet any emergency that may arise.

After the cost of the equipment, the expedited service and the return of the empties, the principal item of expense which we find in the fruit express business which we do not find in ordinary business is the diversions. It is shown that on the Pacific Fruit Express, 10,875 different cars were diverted in 1908-9. Some of these were diverted as many as six times. We have a statement showing the number diverted in the different months and for the different number of times. We had one car that was diverted as many as sixteen times. The telegraph service involved in diverting cars on an average is 4.36 for each car, based on the Western Union tolls, and although the Southern Pacific Company does not pay the West-
131 ern Union for the service exactly $4.36, in the balancing of considerations we endeavor to afford some service to the Western Union Company to compensate them for the service that they perform for us. But upon their tolls, for the service that is performed, it would cost $4.36 per car. We lose, as I have stated, an average of five car days for each diversion.

This has been a valuable privilege to the shipper, for the reason that he is enabled to start these tramp cars out with no fixed destination at any point on the route and those cars may be diverted by him as many times as he desires without any additional charge. He may have those cars held within 48 hours and no demurrage charge. When the cars are moved under refrigeration it is a great expense to the carriers to hold them for diversion, because they have to switch them to the icing plants and that adds to the expense of the service.

I want to impress upon your Honors that this diversion privilege has been voluntarily granted to the shippers by the carriers. They cannot claim that that privilege is a privilege they have as a matter of right, as a matter of law we can deny them the privilege entirely, because when they enter into a contract with the carrier for carriage we assume the only right they have under the common law,
132 and the statute, is the stoppage in transit and they have no right after they have entered into the contract of carriage with us to say "We wish that contract modified, we insist upon it and we want our car put into another market." We can deny them that as a matter of right and as a matter of law, and the Commission so found in the Consolidated Forwarding case.

Commissioner Prouty: That was before the Hepburn amendment?

Mr. Durbrow: Yes; but I don't know anything of a law which would enable the Commission to say to the carriers that they must grant this privilege. And if they did, if it was within the power of the Commission to require that this privilege should be accorded in the freest possible manner, we would be entitled to some compensation for performing the service, under the decision in the St. Louis hay and grain case, 106 U. S.

Commissioner Prouty: Assuming that the present rate is right, including diversion, would it not be the fair thing all around to re-

duce that rate a little and give you a proper allowance for the diversion?

Mr. Durbrow: I think it would make the interests of the carrier as against the interests of the shipper. That is my impression.

I think it is a great accommodation to the shippers to have
133 their cars go out without any fixed destination. Through the agencies they employ, the exchange, they are advised where the cars may be found and instruct the cars to be diverted, and I think that is a valuable privilege. And whether it would make to their interests or not, I don't know, but I do know this: That with the cars handled by the Pacific Fruit Express Company there were 10,875 diversions, some of them six times, and a reasonable switching charge would be $2.50 for switching the car into the icing plant, when they are under refrigeration, that would be a fair charge for switching; and when you figure that out I think you will find that it would add greatly to the rate and probably exceed the 1.15 rate. But I don't know about that; that is a matter for your Honors to determine. But I am trying to make this point. It is not the carriers' intention nor is it their desire, to deny the shippers this right of diversion. Our interests are reciprocal and mutual in this matter. I can say that the carrirers are just as much interested in seeing the shippers build this business up as the shippers themselves are anxious to build it up.

Another fact, your Honors, that I would like to have taken into consideration with reference to this diversion is this. It would work

a hardship probably upon the shippers if they had to send a
134 car out here under ventilation and then find that they wanted to ship it to a particular point en route and required refrigeration. They are entitled under the tariff as it now reads, after the cars have moved forward and have reached El Paso and Ogden on the Southern-Pacific line, to have such cars refrigerated. If they determine that those cars are to be diverted to a market where refrigeration will be required that $25 a car is deducted from the ordinary refrigeration charge when that service is performed.

I intended if I had had time to read some of the excerpts from these cases. For instance, in the Consolidated forwarding case, in 9 I. C. C. Reports, the Commission found that this was an expedited and a special service and that the carriers were entitled to some additional compensation over and above the ordinary and usual service. I shall not take up time to do that now but I do say that under these blanket rates the service and the valuable privileges accorded the shipper have brought about a phenomenal development of this industry. This is shown by the number of acres that have been planted constantly each year, which Mr. Norton has pointed out, and is also shown by the number of cars now shipped, increasing from 750 in 1884 to 40,000 per annum, as counsel stated this morning to your Honors. Where any industry is developed to
135 this extent from 750 cars per annum to 40,000 cars per annum, it seems rather absurd for us to be spending our time here to determine whether the rate is reasonable, because one of the unfailing tests of the reasonableness of rates is that the shipments

are freely moving, and moving in this case over this great territory 3200 miles in some instances from the point of origin to the point of consumption.

Mr. Joseph H. Call: Is that controlling if the railroads take all there is in the business; if the railroads take all there is, is that a true rule?

Mr. Durbrow: No; but I say it is an unfailing test of the reasonableness of a rate, because if it is not a reasonable rate the traffic will not move.

I am not going to take any time to discuss this winter relief rate. Mr. Norton has gone into that. The reason why it is not longer continued has been gone into.

The decay has been eliminated in the lemon. It is only 7 per cent in storage and 3 per cent in transit. In the oranges Mr. Chase testified it was nothing.

Marketing through the exchange these shippers have effected great economies. Competition between the shippers themselves has been eliminated. Their business has been concentrated into
136 fewer packing houses and Mr. Teague testified that so far as lemons were concerned, that where the California lemon meets competition of the Sicilian lemon, he succeeds in getting 50 cents to a dollar more a box for the California lemon.

I want to pause here just long enough to read from the 10th Interstate Commerce Report in the Consolidated Forwarding case at page 620. This was the finding:

"The orange rate as originally established was a competitive rate intended to enable the California grower to meet, first, the competition of Florida, second, the competition of the foreign producer. It has apparently accomplished both those purposes. The producer in California is certainly upon a level with the Florida producer in the matter of freight rates, and the foreign orange no longer comes into serious competition with the California product. It hardly seems to be just to make this competitive rate an absolute standard by which to measure a reasonable rate when the competition has disappeared under the operation of the rate."

In view of that finding—and that finding must be made by the Commission in the case at bar—it does not seem to be necessary to consume any great amount of time in arguing with reference to the competition met by the California orange grower.
137 The Commission in the Florida cases have found that the Florida grower is producing under great disadvantages and the Commission went as far as it could to equalize the advantages with the California shipper as over the Florida grower.

(A gentleman present asked "Are you reading from the dissenting opinion?")

Mr. Durbrow (continuing): Commissioner Prouty's dissenting opinion, yes.

Mr. Norton: No, the concurring opinion.

Mr. Durbrow: The concurring opinion, yes. Thank you, Mr. Norton—and an admirable concurring opinion it was. If I had time I would read it all and close this argument.

Among those advantages the California shipper of oranges enjoys as against the Florida shipper is that he has a blanket rate. There is no local charge to be paid by him from the point of consumption up to the assembling point. He has the valuable privilege of diversion. He may store in transit either in the car or in the ice house. They have brought about economies, as I say, through the instrumentality of this exchange. The decay has been reduced to nothing. They ship every month in the year now from California, as compared with the four months in which the Florida producer ships his product. The California producer has a great advantage in the fact that he only pays a rate upon an estimated weight of 72 pounds to the box, whereas the Florida shipper pays a rate upon an
138 estimated weight of 80 pounds to a box. He gets a lower rate per hundred, comparatively speaking, so far as the relation of the weight to the boxes are concerned, and when he sells his commodity in the east the California shipper sells fewer oranges and less weight on the same unit of value as the Florida shipper, because as Commissioner Prouty held the unit of comparison is the box itself.

Now your Honors, these complainants are not entitled as a matter of law to have rates which will enable them to meet and overcome competition, as was held by the Commission in the 14th I. C. C. Reports, page 502, in the Florida case.

(Reading:)

"It is no business of the defendants, and no part of the duty of this Commission to establish such railway rates as will, at all hazards, enable American products to compete with foreign products. Undoubtedly these competitive conditions must be considered and rates made when that can properly be done which will enable the traffic to move; but when reasonable rates have been established it is for Congress to say whether the foreign products shall be admitted to our markets. If the present duty is not sufficient these defendants cannot be required to reduce their charges for the pur-
139 pose of keeping out the foreign article."

I want to read from the decision of the Commission in the Florida case, 17th Interstate Commerce Reports, at Page 560.

"It is the duty of these railroads to establish reasonable transportation charges and in so doing competitive conditions must be considered; but it is not their duty to make good to the producer the result of his own folly or misfortune. The position of the growers is that such rates should be established as will permit them to market their product at a reasonable profit. No such test of the justness of a transportation charge can be admitted."

But nevertheless, while they cannot claim such a rate as their right, they have it as a matter of fact as disclosed by the evidence.

Mr. Joseph H. Call: You do not claim that the Commission held there that after Congress had given the relief that that meant that the carrier could go and take it?

Mr. Durbrow: No; but I meant that when the carriers had put their rate in on a low competitive basis and at your request had reduced it to bed rock, as you said, that when the conditions had

changed, that as the Commission said in the 9th Interstate Commerce Reports, that rate might be raised so that those carriers would receive a reasonable return for the services they rendered.

140

So far as the competition in lemons is concerned, I point to the tables in evidence, whereby the cost is shown including the transportation cost, of moving lemons from Sicily into the United States today as compared to the cost of moving a box of lemons from California to these different markets. We have taken the ports of Baltimore, Philadelphia, New York and New Orleans. In every instance we find that the California grower is at a great advantage so far as transportation is concerned, over the Sicilian grower, and taking their figures of cost of production as testified to before the joint committee of Congress, and taking the testimony in this case, your Honors will find that the California growers can place their commodities in the eastern markets, even where the keenest competition is found, at a great advantage over the Sicilian grower. Those tables are so clear that they will speak for themselves and I need not enlarge upon them.

I call the attention of the Commission to one figure however that shows the phenomenal development of the lemon industry; that the California shipments have increased 328 per cent, and the imports have decreased 10 per cent in four years. I think the figures are as I have given them, although I have not got them before me.

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I am not going to enter into a discussion of the cost of production and the profits, because Mr. Norton has covered that carefully. The complainants' own figures show that they are enjoying great prosperity. According to Mr. Chase's testimony he enjoys a net profit of $429.60 on his orange shipments, and that is an average given by him over this territory which is not highly productive. It has been testified that some of his competitors produce a great deal more per acre and that the oranges were of a superior quality.

So far as the lemons are concerned, Mr. Teague testified that he received $2.55 per box net, or $309 an acre. But we need not spend time here in determining what it costs to produce the lemon, nor what the return is to the lemon grower, because the records that are before us themselves disclose that they are earning large profits. The confidential reports, marked Complainants' Exhibits Nos. 19 and 20 that were introduced by the complainants in this case, the confidential reports made by the manager of the association to his constituents, disclose that the net earnings of the exchange were in 1908 and 1909 $13,956,516.97.

Mr. Mayer: You mean net receipts?

Mr. Durbrow: No; the returns; the net returns.

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Mr. Mayer: You said net earnings.

Mr. Durbrow: Net returns.

Mr. Mayer: Those were the receipts?

Mr. Durbrow: And for the four years ending in 1908, compared with the previous four years, they had an increase in their shipments of 118 per cent. For a corresponding period of comparison the

f. o. b. price has increased from 1.25 to 1.80, and he has received, as Mr. Norton has told you, 53 cents additional per box as a price for the lemons and oranges that they have sold.

Mr. Joseph H. Call: That Government report that you refer — is not in evidence, is it?

Mr. Durbrow: I am not referring to any Government report.

Mr. Joseph H. Call: You said you agreed with the Government report.

Mr. Durbrow: No, I do not say that.

Mr. Mayer: He is referring to the association report.

Mr. Durbrow: I am referring to the association report. An increase of 80 cents over 1.25 in four years.

Mr. Mayer: The Government report shows about 1.50 valuation. It is in evidence.

Mr. Durbrow: Very well.

Mr. Mayer: Taken from Mr. Powell's record.

143 Mr. Durbrow: Now I am going to take a little time on complainants' brief. Complainants endeavor to compare rates on citrus fruits with other commodities in order to determine whether the rates are reasonable, and they state at page 83:

"Any comparison of rates to be of any value whatever, must have some relation to the rates complained of, either as bearing upon the general scheme of rates applied from a particular territory, or over particular lines, or with reference to rates upon analogous or like commodities, or with rates from different points of production to competitive points of distribution."

There can be no question but that any comparison of rates is worthless unless we take into consideration the weight and bulk and size of the commodity, the net and gross weight, the risk of handling the particular commodity, the return of the empty, the cost of carriage and the competitive conditions, competition of markets and competition of carriers by sea and by rail; and after laying down this rule, with which I agree, counsel disregards it entirely in making comparisons which I think are absolutely worthless.

At pages 92 and 93 of their brief, they undertake to compare the lemon rate with the large number of other rates here. The comparison is unfair absolutely because they have not shown any

144 commodities which take a higher rate. For instance, bananas, cheese, dressed poultry, packing house products are a few that take a higher rate, and canned fruit and prunes——

Mr. Mayer: You do not mean to say that cranberries move out of California?

Mr. Durbrow: No; you are comparing commodities moving east and west bound here with a rate on an east bound commodity.

Mr. Mayer: You are getting into my industry now.

Mr. Durbrow: Many of these commodities do not move under refrigeration and many of the commodities are succeptible of sea competition and therefore do not offer any substantial basis of comparison.

I may dismiss this question of comparison of rates with other commodities by pointing to the decision rendered by the Commission, the concurring opinion of Judge Prouty, and I will not take time

to read it; but there it was found that the comparison of rates made a very favorable showing so far as the lemon rate was concerned. Mr. Prouty said:

"If the orange rate be compared with other rates from California to the east or from the east to California it willl be found nearly as low, when the nature of the service is taken into account, as the extremely low water competitive rates at Pacific Coast terminals, and generally lower than rates not affected by actual and controlling competition of some kind.

145 I also want to call attention to the language used by the Chairman of the Commission in his dissenting opinion, which also was an excellent opinion.

"On the other hand, if comparison be made between the orange rate and the general run of intermediate rates, which, like the orange rate, are not in any considerable degree affected by water competition, it will be found that the orange rate is beyond question relatively low. In other words, the relation of the orange rate to the rates on other traffic, moving between similar points and under similar conditions on these transcontinental lines, is more favorable to the orange shipper than the general relation of such rates in other parts of the country. So far, therefore, as the majority opinion depends on comparison with competitive rates to the Pacific Coast, or other comparison with relative rates elsewhere, it seems to me to have little or no support."

I am not going to take any time in comparing the California orange rate with the Florida orange rate. The Commission has passed upon that question recently and, as I have stated, it seems to me in reading that opinion that the Commission strained

146 themselves to the utmost. In order to afford a reduction in the rate to the Florida grower, in order that he might not be shut out of the market reached by the California producer, it seems to me they did all they could.

We have undertaken in some of our tables to compare these rates, and it will be found in each instance that the per ton per mile earning is very much less in each case, so far as the California shippers are concerned. Not that I am contending that this should be determined upon a per ton per mile basis, but if they received the same rate per ton per mile as the Florida shippers, the orange rate and the lemon rate paid by the California growers would equal 1.76 and the California rate, I may add, would be 1.24 and 1.26 per hundred, if a local charge was added such as is added in the Florida cases. As Mr. Commissioner Prouty said in the Florida case, it seems certain that the California rate is less per box and the distance is twice as great.

Now if your Honors please, the complainants here have endeavored to prove this rate unreasonable by intimating in a very general way that the railroads are earning too much money. I don't think they ought to say very much about people earning very much money. I have had occasion to argue that question quite fully to your

147 Honors, but I cannot let this case go by without saying just a word. I do not believe that for an instant this Commission

can determine the reasonableness of the rate here, by determining how much money these carriers are earning. In the first place, it is impossible to determine the value of the road because, as the Supreme Court said in the case of Backus vs. Railroad, 154 U. S., the road must be considered as a going concern and if they are considered as a going concern, we must consider their value as reflected in the stock market, and if a reduction is made in the rates themselves, it naturally reflects upon stock and the value of the stock will be lessened, and you will have the same relation of rates to value as you do today. As I said to your Honors, this is a fallacious theory to determine rates from value when the value is the final outcome of the rates themselves. The operating expenses fluctuate annually, the revenues fluctuate annually, and if the rates were fixed for one year the next year the volume of traffic might increase or decrease, which would affect the rates, and a competitor might come into our territory and cut our business in half. Under the theory advanced by the complainants we would be entitled to have our rates doubled. The Supreme Court of the United States has never fixed any such rule for the determination of a reasonable rate. They have
148 never passed upon that question, for it is quite different to lay down a rule to determine whether a rate is confiscatory, whether it is below the minimum rate, which could be established without infringing upon the carriers' constitutional right upon the one hand, and to fix a rate in a case like this, on the other hand, as the Commission is entitled to fix—a reasonable rate.

Mr. Prouty has asked us not to say anything about refrigeration rates, but I want to say just this; that just as is the case with the transportation rate, the refrigeration rate has been reduced from time to time, from $70 originally at Chicago, down to $62.50 at the present time. Not only has the rate been reduced but the minimum of the car has been reduced, which requires additional ice, and to overcome that difference we have increased our ice bunkers from 9,000 pounds to 11,000 pounds, so that there is an additional cost of performing the refrigeration service, and the rate is less.

I feel your Honors that when you come to consider the evidence in this case, you must take into consideration and give great weight to the question of service. We have spoken about the concurring opinion of Mr. Prouty and the dissenting opinion of the Chairman of the Commission when the Consolidated forwarding case
149 was decided in 10th Interstate Commerce Reports. But there is not much difference in those opinions. The Commission were practically unanimous in deciding that if the service was satisfactory the 1.25 rate was reasonable, and just to prove that this statement is borne out by these decisions, I want to read from page 606 of the report in the Consolidated Forwarding case, and I want to read from Commissioner Clements' decision, in which a majority of the court concurred:

"If the time of service to eastern points should be reduced to a basis of eight days to Chicago and twelve days to New York, a somewhat less rate reduction would afford a reasonable charge, but the reduction in that case should be at least 10 cents per hundred pounds."

And again at page 616, Commissioner Clements stated:

"The rate of $1.25 per 100 pounds upon oranges is found unreasonable and unjust and in our opinion it should be reduced 15 cents per hundred pounds, but if the time of service to eastern markets should be restored to the old basis as indicated, by eight days to Chicago and twelve days to New York a rate as high as $1.15 would perhaps be fair and reasonable."

And what does Commissioner Prouty say in his concurring opinion? At page 619 he says:

150 "The testimony showed that formerly the time from points of production to Chicago was seven and eight days, whereas now it is from ten to twelve days, that to points east of Chicago it was even worse and the whole service there was utterly unreliable. I am of the opinion that the orange grower in California would gain much more by obtaining the service which he requires than by a reduction of 15 cents per 100 pounds, the service remaining what it now is.

"It is approximately 2,200 miles from San Bernardino to Chicago by the short line. Some little time is needed to assemble these oranges and make up the trains ready to be sent east, but when once made up there is no further delay except in some instances arising. A schedule of seven days between the packing house at Chicago would not mean an average speed of more than 15 miles an hour. Live stock schedules from points west of the Missouri River to that River are from 18 to 20 miles an hour. The peach schedule from Georgia to Alexandria is from 20 to 23 miles an hour. There is no reason why these oranges should not be handled at the rate of 15 miles an hour and why that time should not be actually made. If this schedule was actually in effect I should not be in favor of disturbing the rate of $1.25 at the present time."

151 These defendants, your Honors, have measured up to the standard set by this Commission. Not only have we reduced the schedule to 7½ days to Chicago; but the exhibits will show, both as to the Santa Fe and the Southern Pacific Company, that those schedules are maintained with great regularity.

If for no other reasons, we should succeed in inducing your Honors to render a favorable decision.

But we do not rely upon that alone. We call attention to the fact that this rate was established originally upon a competitive basis. It has since been reduced from time to time; and we have accorded the shippers most generous privileges—diversion, storage in transit, refrigeration en route; if they wish to divert their cars they may transport caretakers. If they desire, we furnish dunnage free to the shippers; the service is expedited. Their counsl say it is satisfactory. It is expensive to the carriers, carried in this expensive equipment: the loading space in the cars means that a great deal of the space is lost and it has resulted in a great prosperity and the building up of a great industry. And if your Honors please, we feel that the results that have been brought about by this rate justify the rate at the present figure if not at a higher figure.

These privileges have been granted to these complainants
152 so often and with such regularity that it has become a habit of them to ask us for more, and when, as their counsel say, we find ourselves landed at bed rock, they come here before your Honors and ask your Honors to make a further cut in our rate. It will be unjust and inequitable for your Honors to do so; to accord to the shippers a lower rate would mean that they would control absolutely the orange and lemon industry in the United States, would drive Florida shippers from the market, would undo absolutely what the Commission accomplished in rendering their decision in the Florida case and enable them to build up a gigantic monopolistic trust, and we say that this Commission should not lend its aid to such a cause.

Commissioner Prouty: Before you begin, Mr. Mayer, permit me to make one request. The cars used by the Santa Fe Company are of the standard length, a certain length, and the cars used by the Southern-Pacific are of the standard length, slightly longer as I remember it. Now Mr. Call, I wish you would file a statement showing the number of boxes which can be loaded into both the Santa Fe cars and the Southern-Pacific cars, two tiers wide, the entire length of the car when the bunkers are down, and the same when the bunkers are up; and Mr. Durbrow, will you please file such a statement
153 showing your understanding of it as to the Southern-Pacific cars and Mr. Norton as to the Santa Fe cars.

Mr. Norton: You want it six tiers high?

Commissioner Prouty: And two tiers high, both with the full width of the car and with the bunkers down.

Argument of Mr. Levi Mayer, on Behalf of the Complainants.

Mr. Mayer: It is a pleasure to have the opportunity of replying to the arguments of two capable and experienced and skillful lawyers, and it has been assigned to me to discuss the technical part of this question. The two gentlemen who have preceded me have done so. The time at my command will make it impossible for me to present a logical argument from a technical standpoint, as I had intended to do. There are, however, some salient propositions which I think will enable this Commission to quickly comprehend certain rugged propositions upon which we rest. The learned counsel for the other side—and my argument will be devoted principally to taking up some of his points—in replying to them has discussed the lemon rate and has stated to your Honors that the record in this case shows that the dollar rate which was adopted in 1904 was a tem-
154 porary rate, and that the shippers agreed that it should be only temporary. Let me read to your Honors what a United States circuit court has said upon this very question in this very controversy, and I may be pardoned for referring to the United States circuit court, because the learned counsel have set a very valuable precedent.

When this case was on before Judge Morrow for an injunction to enjoin the putting into effect of the increase in the lemon rate,

this precise question was the issue in controversy. The railroads had their day in court, as did the complainants. And here is what Judge Morrow said. This is in the case of the Arlington Heights Fruit Company vs. Southern Pacific, 175 Fed., p. 143. In November 1904, after some negotiations between the parties, the rate was made a permanent rate or at least the lemon growers so understood it. And thereupon, having faith that such permanent rate would be continued, they have enlarged the area of their orchards and increased their business upon the basis of this factor of expense. This rate has *not* been maintained for five years. The defendants deny that they ever gave the complainants to understand that the rate of $1 per hundred pounds was to be a permanent rate, but I think
the evidence furnished by the bill and supported by the affi-
155 davits satisfactorily establishes the fact that the complainants, as a result of their negotiations with the defendants, were given to understand that the rate of $1 per 100 pounds would be a permanent rate upon which they could go on and develop this industry, and the fact that it has been continued for five years indicates that the rate was to be permanent and is prima facie evidence that the rate is not unreasonably low.

Now, what occurred since November, 1904, to justify the defendants in increasing the freight rate to 1.15 per hundred pounds? There is some evidence that there has been an increase in the cost of labor, but this fact applies with equal force to the business of both parties. The entire cost of transportation is not in fact any greater. The services rendered by the carriers do not appear to be any more expensive as a whole than they were in 1904, if indeed they are as expensive now as they were then.

Where then is the change of conditions? Why the increased rates? It appears to be confined exclusively to the legislation by Congress respecting the tariff. The purpose of Congress was to protect American industry; but does any one suppose that Congress
would have made such an increase had it been suggested or
156 even suspected that the railroad companies would immediately increase their freight rate and appropriate a portion of this freight rate for their benefit? Manifestly not. The policy of imposing protective duties is for the benefit of the producer, and to encourage home production and home manufacturers, and not to increase the cost of labor and of transportation. Its ultimate purpose is to develop the country, to encourage diversified industries and to save our markets for our own people, on at least something like equal terms with the foreign producer.

The wisdom of this policy is not a question for the judiciary. It is purely a legislative question.

But when such a policy has been adopted and placed on the statute books the courts must give it effect when the issue is presented.

And what did your Honor, Commissioner Prouty, say on the same subject in the Florida Fruit case?

"Congress has determined the amount of protection which shall be accorded the American industry and the carriers should not wipe this out by their rates of transportation."

Mr. Norton: As Mr. Durbrow kindly gave you a little time, I would like to interrupt you——

Mr. Mayer: No, I object. Not because I am unwilling to be interrupted——

157 Mr. Norton: I happened to try the case you are reading from——

Mr. Mayer: I shall object to any interruption unless what I state is erroneous——

Mr. Norton: Well, the import of what you have read is erroneous.

Mr. Mayer: That is for this Commission to determine. I object to any further interruption.

Mr. Norton: Very well.

Mr. Mayer: We are prepared and I presume each one of you has a copy of our abstract of evidence, and for purposes of convenience I think the gentlemen of the Commission will approve, we have abstracted the evidence by subject matter and given an index to the abstract, and if the Commission will look at page 1 of that abstract they will find every subject by subject matter is indexed, giving the page of the testimony and the name of the witness.

On page 39 of the abstract—I shall read very little more, if at all, from any document for lack of time, which I very much regret—Mr. Woodford testifies:

"Since then we have had quite a little talk with the representatives of the carriers on the orange rate being a temporary thing, but we never had any such notice as to any lemon rate. We
158 considered the lemon rate as permanent as any other rate, although the representatives of the carriers have always talked to us about raising their rates."

Now Mr. Commissioner Prouty asked for some data, which I could give you, it being taken from the record.

There are 384 boxes in a Santa Fe car, and in a Santa Fe collapsible car there are 468 boxes.

In a Southern-Pacific car there are 396 boxes, or 480 in a collapsible car.

The Commission will observe the increase is 84 boxes to the car. 396 plus 84 makes 480.

The weight is 72 pounds for each box.

There are in round numbers about twelve dozen (144) oranges in a box.

At 1.15 freight rate per hundred, it costs 83 cents a gross freight per box, or over ½ cent per orange.

60 cents net per box, or 5 cents net per dozen, the freight earnings would be:

$323.75 freight per car, average.

$387.50 freight per car with collapsible bunkers.

82 per cent of the gross is profit, the record showing that 28 per cent is the cost of transportation. Deducting the 28 per
159 cent leaves the profit on each car of 72 per cent of the above figures, or as follows:

$233.10 per car average.

$278.64 per car, collapsible, average.

The total shipments of oranges during the year ending in 1909 were 33,947 cars.

The gross earnings on this number of cars amounted to $10,990,341.25.

The net earnings, after deducting the cost of transportation, 28 per cent, were $7,913,045.02.

Mr. Dillard: You said you were willing to be interrupted if you made a mistake.

Mr. Mayer: One moment.

Mr. Dillard: Then I will not interrupt you.

Mr. Mayer: I said the cost of movement is 28 per cent. The total cost is about 60 per cent. That includes the maintenance, fixed charges, and so forth. I am speaking from the record, as to the cost of moving the car. That is the per cent. It appears from this record that there is no return whatever on the orange or lemon investments. I am leading up to the suggestion that after deducting the 28 per cent cost of moving the car, we have the figures

160 that I have mentioned left as the income of the railroad from which it takes its maintenance, its fixed charges and the profit.

The cost per box as shown by this evidence, the average cost—not the cost obtained by taking the testimony of a single witness, Mr. Teague, but the average cost as shown by the records of all the growers in California, is as follows:

Cost per box on the tree, which is inclusive of investment and interest—decay, loss by the elements and loss by pest, is at least $1. That is the minimum. It goes 40 cents higher in the testimony of some witnesses and 50 cents higher in the testimnoy of other witnesses. The picking costs 7 cents, the packing 30 cents, the selling 7 cents. This leaves $1.44, which is the average cost as shown by the evidence of all the growers, members of the California Growers' Exchange, which represents 60 per cent of all the growers in California.

The average sale, f. o. b., the average price as shown by the statistics, representing the sales of the commodity as produced by 60 per cent of the growers of California, is 1.52.

So the average profit per box f. o. b. has been 8 cents, or $\frac{3}{4}$rds of a cent profit per dozen, figuring nothing on investment, no return on the money and nothing for decay, depreciation or the effect of the elements or the pest.

161 On the other hand the profits of the carrier, I mean the carriage profits, has been a fraction under 5 cents per dozen.

Now let us take the lemon statistics. These are taken from the figures in this record.

In a Santa Fe car there are 312 boxes; and in a collapsible bunker Santa Fe car there are 84 more boxes, or 396 boxes.

In a Southern-Pacific car there are 324 boxes and in a collapsible bunker Southern-Pacific there are 72 more boxes, or 396 boxes.

The weight of each box is 84 pounds, twenty-five to thirty dozen in a box. So there are from 300 to 360 lemons in a box.

Taking these figures at 1.15 per 100 pounds freight rate, 97 cents

freight per box, being 13 cents increase over $1 per 100 pounds, or over 1/3 of a cent per lemon.

That has been enjoined by Judge Morrow. That is an increase of over 1/3 of a cent on a lemon on the dollar rate of freight.

The freight earnings per car are $273.84. On a collapsible car the earnings are $342.72.

Deducting the cost of moving the car, the transportation charge, leaves an income to the railroad, free of all cost of transportation, of $190.17 on an ordinary ventilated or refrigerator car, and
162 $246.76 on a collapsible car.

The total gross earnings on lemons, being the freight on 6,150 cars, which was the exact shipment last year, was $16,833.16; and the earnings after deducting the 28 per cent for cost of moving the car were $1,211,987.52. The cost per hundred pounds on the tree, exclusive of investment, decay, the elements and pest, as shown by the testimony, not upon information and belief, not hearsay, the exact specific mathematical figures which are in the record, not the proceeds of one lemon grower who ships his lemons to Alaska, who has a brand, who has built up a trade as the record shows, exclusively his own, who does not even belong to the association——

Mr. Norton: Are the Association's in too?

Mr. Mayer: The Association's figures are in this record. Speaking with mathematical accuracy they show the following: That the cost is a minimum of the cost on the tree of $1; that the picking is 26 cents; that the packing is 57 cents and the selling 7 cents, or a total of $1.90.

And let me say that the selling is reduced infinitesimally by reason of the existence of this monopolistic association so styled by my learned opponents, the California Fruit Growers' Association, which if it has become monopolistic has been educated I am
163 afraid in a very instructive school on the California coast.

7 cents has been the cost of selling or a total of $1.90 is the cost to the grower and the average price, the average price not on all the lemons sold through the California Fruit Growers' Association, which is 60 per cent of the total, $2.05, or 15 per cent profit on a box, or less than ½ cent per dozen. The railroads' earnings—understand, I mean the profits to the railroad after deducting the 28 per cent for transportation—are a little less than 2½ cents per dozen.

And yet my learned friends say that the growers and the railroad companies are in partnership. They may be, but it is a partnership of the kind in which the railroad company is the special partner running no risk in our industry but gaining by far the larger portion of the revenue.

Counsel has referred to the fact that it costs Sicily $3.14 a box to get its lemons into New York, and he has the assumption to say to your Honors that the record shows that. He uses that as a cornerstone upon which to build his inferences and his conclusions. Now, what does the record show That when the matter was being agitated before Congress with reference to an increase in the tariff from

1 to 1½ cents a pound, that an Italian importer was oppos-
164 ing the increase in the tariff and he stated before the Committee of Congress that $3.14 was the cost. Was that any evidence against the testimony of the California growers? Was it any evidence against this indisputable proposition? Now let us turn to this beautifully decorated red-line map to which counsel invites your Honors' attention as proof that a vast quantity of the lemons were sold in New England territory. Please turn to that, at page 35 of the brief of the learned counsel for the Santa Fe. And let me answer his question. Group B shows that 133 carloads of lemons were sold. I have indicated to your Honors that the total shipment was 6,150 carloads. So that out of 6,150 carloads my learned friend produces evidence that there was shipped into New England territory 137 carloads.

Mr. Norton: That is by one carrier.

Mr. Mayer: Why don't you show what the other carriers shipped? Why did you pick out the short haul shipper? And may it please you, Gentlemen of the Commission, if the territory east of the Alleghanies is so prolific in profits, why didn't the California lemon growers sell their lemons there? Do they do it as a matter of choice? Did they confine the sales of their lemons to the territory least productive, or are they guided, as all merchants are, by
165 the spirit of revenue, do they send their lemons to a market which is most productive? Why is it during 1908 and 1909 the table introduced in evidence shows that only 137 cars were shipped out of a total product of 6,150?

Your Honors were told that that is the period of the year before the Sicilian lemon gets into the American market by reason of the greater duration of the period of transportation, which is thirty days, as against the so-called nine or ten days, that for two or three weeks there is a good market in New England; but will your Honors compare that testimony to which counsel refers to the table on page 31 of our brief, which shows that during 1909 the total average was 1.69 per box for lemons that we got—not what Sicily got. And do your Honors believe for a minute that if we could sell lemons in New York for 3.14 or for any amount in excess of 1.69, that we would not sell them there?

The testimony shows that half the lemon crop only can be consumed west of the Mississippi River and the other one-half must be sold east of the Mississippi at any price.

Counsel has referred to the figure 1.80 as being the representative figure of the California Association. Counsel is in error.
166 That 1.80 is the representation of the oranges and lemons combined. Counsel compared Florida with California, and the rates. Does it occur to this Commission that in Florida there are only four months of the year when oranges are gathered and shipped, and that the railroads there have this commodity to transport only four months of the year, whereas in California the record shows that it has a daily shipment, the minimum being as I remember it 233 cars a week, running up to a thousand cars a week. There is a daily shipment.

In Florida the oranges are gathered over a territory nearly 500 miles in extent. The labor, every item of expense, is against railroads in the Florida business. The territory traversed by the railroads in Florida is a scant and unproductive territory with practically few industries upon which to draw and fewer still whose commodities they can transport. Take California. The territory in which these oranges and lemons grow is a territory less than thirty by sixty miles and there are no such expenses——

Mr. Norton: 600 miles, if your Honors please.

Mr. Mayer: I am speaking of the loop.

Commissioner Prouty: Most of the oranges originate there——

Mr. Mayer: In that loop, which is less than thirty by sixty
167 miles. Those oranges are gathered there, picked, they are put in cars daily. The carriers need not wait for loads. There is a supply there always, and the carriers can always tell in advance how many cars are needed and need have no accumulation of empties spotted along the line.

They speak of 75 per cent of the refrigerator cars being empty on the line of the Southern Pacific. Has it occurred to your Honors that they have not talked about the mileage of those empty cars. The total mileage of all the empty refrigerator cars is 35 per cent. How is it possible to say that 75 per cent of all the refrigerator cars are empty when of the total mileage made by all the refrigerator cars 35 per cent represents the per cent of empties, and when counsel undertakes to argue that the empties are counted at the gates, Ogden, for instance, on the Southern Pacific, and Seligman on the Santa Fe, they forget to say that those are empties merely as they pass those points. How many of those empties were loaded and unloaded on their trip from the east to the west, before they got to those points we are not told.

Then it is stated that the Florida rate is competitive with California. The fact of it is that nearly all the principal points outside of New England, have a better rate from Florida, that Flor-
168 ida enjoys an advantageous rate. Bear in mind also that the cars from California come in train loads or can come in train loads, and if the carriers do not move those cars in train loads it is because they regard it as more economical to mix that traffic with other merchandise.

Is not that a conclusive answer to the contention that the fruit is expedited, when in the same train, when the consist in the record in this case shows they carry merchandise of every kind and description, and there is no more expedition to the carload of citrus fruit, outside of Los Angeles or San Bernardino than there is to a carload of any other merchandise.

Mr. Norton: Table 1 of our brief shows exactly to the contrary.

Mr. Mayer: The record in this case, Gentlemen of the Commission, is conclusive. Taking either proposition that they advance; if they do not send them in train loads then they are mixed with other merchandise. And this matter is argued, and I shall not take time to read it, on page 130 and the following pages of our brief, and the exhibits show the figures, give the statistics.

If they do not find it economical to move a train load of citrus fruit out of California and they mix it with other merchan-
169 dise (and counsel refer to a train load of citrus fruit out of Los Angeles reaching Chicago in four trains) that means that the merchandise put into other trains was facilitated with the same speed that the citrus fruit was.

Mr. Norton: But the trains containing citrus fruit beat all other business greatly.

Mr. Mayer: The record in this case shows that you do not come within the scheduled time. You interrupted Mr. Call and Mr. Prouty or Mr. Knapp said "Don't take time to turn to the record." I have taken the time. They select the cars themselves——

Mr. Norton: I beg your pardon; we selected what Commissioner Prouty called for.

Mr. Mayer: I mean on your exhibit. Our exhibit (Complainants' Exhibit No. 68) shows a list of P. F. E. cars loaded with citrus fruit consigned to California Fruit Growers' Exchange, running over the Southern-Pacific and Salt Lake roads, destined to Chicago. To avoid the criticism that particular cars were selected, all cars arriving on each Monday during the month of January, February, March and April, 1909, and December, 1909, and January, Febru-
ary and March and April, 1910, were taken. This shows a
170 total of 340 cars, upon which the average time in transit was eight days, seven hours and eight minutes, or slightly in excess of 10 miles per hour.

Mr. Norton: Why did you take January, the worst operating month of the year?

Mr. Mayer: We took not only January, we took nine months. We took January, February, March and April of 1909, December, 1909, and January, February, March and April of 1910, up to the date of the hearing, the months of the heaviest movements.

Mr. Norton: That is the Southern-Pacific?

Mr. Mayer: That is the Southern-Pacific. And the Santa Fe is the same. Complainants' Exhibit No. 69 shows the actual running time of the Santa Fe cars sent to California Fruit Growers' Exchange loaded with citrus fruit destined beyond Chicago and arriving there during January, 1910. This includes 84 cars and the actual running time was 9 days, 14 hours and 35 minutes, or slightly over 9 miles per hour.

Mr. Norton: You are confining yourself to January on that?

Mr. Mayer: We took the month that was immediately available, but we are willing to submit this case upon this record or upon all statistics, and I will stipulate for the California Fruit Growers' Exchange that if you will show you came within the schedule time we will ask no reduction in rate.

171 Mr. Norton: You refused to put it in after we gave you the proof.

Mr. Mayer: I have put a table in this brief showing the movement between eighteen divisions. Is that what you referred to?

Mr. Norton: No.

Mr. Mayer If it please the gentlemen of the Commission, they

add the time between each of those reception divisions and they forget the time that the train was held up at each one of those divisional points. Why go to the trouble of making this table, table No. 1, to which you refer——

Mr. Norton: It shows the best running time on the road.

Mr. Mayer: Yes. They show the time between the various divisions on the road but they do not show the time the train was held up at each division. This is page 73 of the brief. I want to call attention to that.

When counsel says he quotes the California statute, that the introduction of secondary evidence is proof that better evidence to the contrary exists, we invoke the same rule upon him; and when he invokes the suppression of evidence, I ask why did not this table show—not the running time of the trains between each station until they arrived at Chicago, but also the amount of time that the trains were delayed at each of those eighteen divisions?

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Mr. Norton: That has been explained——.

Mr. Mayer: Not in this record, not in this table and not in your brief.

Mr. Norton: In the record and in the brief both.

Mr. Mayer: Well, I hope the Commission will read it.

Mr. Norton: You overlook the diversion that those cars sustain.

Mr. Mayer: Counsel speaks of the diversions. Diversion increases their traffic. He speaks of the unlimited privilege of diversion and he forgets to tell the Commission that the right of diversion is limited when they get off their roads. On certain of the roads, eastern connecting carriers, it is limited to two diversions, and in some cases it is prohibited altogether.

A Voice: Which one?

Mr. Mayer: The New York and New Haven. But you did not tell the Commission that off your lines the diversions are limited to two. But I answer that these diversions are acceded to because they benefit the shipper and they also benefit the carrier. It leads to a quicker distribution and enables a quicker return of the cars.

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Counsel speaks of the decay. They say the decay has been eliminated. According to the testimony of Mr. Powell, the expert. I accede to his statement, but the very fact that the decay has been eliminated shows that the lemons and oranges are no longer a perishable commodity. I accept the suggestion.

Counsel quotes the testimony of Mr. Call before the Committee of Congress, in which he says that he has reached the bed rock bottom. I did not hear Mr. Call's testimony. I met him in this litigation and as good a lawyer as he seems to be a grower, as *an* experienced an advocate as he seems to be a cultured producer of oranges and lemons, yet when he was before the Committee of Congress asking for an increase in the tariff he was speaking of the lemon rate. That was the only question Congress was dealing with and the only question that concerned the Committee. And perhaps carried away by the enthusiasm of the situation he may have imitated the example of Mr. Ripley, who has been so much in evidence

in this record, to whose letter reference has been made, that the ice cost nothing, there is no profit made on the ice, and that they could not carry lemons at a dollar rate; but in this record, in the abstract, is contained the letter in full of Mr. Chambers who gives
174 the argument that the lemon growers cannot exist on a rate in excess of $1, an argument covering six or eight pages, set up in full in this record.

As I have said, the Santa Fe table does not show the car mileage at all but takes merely the numbers of the empties, calculated from a certain point, the gate, to the west.

Well Gentlemen of the Commission, you have been more than indulgent to me. I have talked much quicker than I expected. There is much more that I would like to say, but I have imposed upon the patience of you hard working gentlemen and I do not intend to emphasize that imposition.

But let me ask this. We have received from the learned counsel on the other side, (and that their briefs are able the Commission will already have appreciated by having listened to their acute, interesting and learned discussions) two briefs, the total of which are 325 printed pages. I make no complaint whatever about my having received one brief on Monday and the other brief just before I got on the train on yesterday; but we ask the privilege of the Commission to file a reply brief which we will do in such short time, if necessary remaining in Washington to do it, as the Commission may indicate. The briefs of learned counsel are full, we
175 think, of erroneous inferences, not to say possibly erroneous premises.

Mr. Joseph H. Call: We will confine ourselves to a synopsis of the oral argument.

Mr. Mayer: We will get our reply brief in in as few days as the Commission will indicate. I think it will help the Commission in clarifying what their testimony refers to and to what we think the record shows.

The Chairman: You may have ten days for a reply brief.

Mr. Norton: In case any new matter is introduced in their brief, may we say something in rejoinder. As Mr. Mayer would not allow me to interrupt him, I think I am entitled to state one thing in reference to the opinion of Judge Morrow in Los Angeles——

The Chairman: Mr. Norton, you may have ten days in which to file a brief if you desire.

Mr. Norton: I do not think that I will want that privilege. I simply wanted to say that an affidavit was put in there which I believed was rather equivocal to the man who made it, representing to him that they had never understood that this rate was ever to be restored, and as I pointed out in my oral argument, not one of those men went upon the stand when we tried this case at Los Angeles to say that.

176 Mr. Joseph H. Call: There is no name mentioned by Mr. Chambers, no name mentioned by any grower that he talked with.

The Chairman: The case will be regarded as submitted.

(Thereupon at 5 o'clock, p. m., the Commission adjourned.)

a Interstate Commerce Commission, Washington.

I, John H. Marble, Secretary of the Interstate Commerce Commission, do hereby certify that the paper hereto attached is a true copy of the original transcript of the stenographer's notes of that portion of the testimony taken before said Commission on September 9, 1910, at Los Angeles, California, in the case of Arlington Heights Fruit Exchange and others against Southern Pacific Company and others, docket No. 3000, the original of which is now on file and of record in the office of this Commission.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this 15th day of April, 1912.

[Seal Interstate Commerce Commission, 1887.]

JOHN H. MARBLE, *Secretary.*

b *Stenographer's Minutes.*

Before the Interstate Commerce Commission.

Docket No. 3000.

ARLINGTON HEIGHTS FRUIT EXCHANGE et al., Complainants,
vs.
SOUTHERN PACIFIC COMPANY et al., Defendants.

At Los Angeles, California.
Date September 9, 1910.

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1 Before the Interstate Commerce Commission.

Docket No. 3000.

ARLINGTON HEIGHTS FRUIT EXCHANGE et al., Complainants,
vs.
SOUTHERN PACIFIC COMPANY et al., Defendants.

LOS ANGELES, CALIFORNIA, *September 9th*, 1910.

Before Hon. C. A. Prouty, Commissioner.

Appearances.

Asa F. Call (Los Angeles, California) and Francis E. Matthews, of Meyer, Meyer, Austrian & Platt, (Chicago, Illinois) for the Complainants.

C. W. Durbrow, (San Francisco, California) for the Southern Pacific Company; T. J. Norton, (Chicago, Illinois) and E. W. Camp, (Los Angeles, California) for the Atchison, Topeka & Santa Fe Railway Company; A. S. Halsted, (Los Angeles, California) for the San Pedro, Los Angeles & Salt Lake Railroad Company.

2 *Proceedings.*

Commissioner Prouty: The Commission has assigned for hearing this morning No. 3000, Arlington Heights Fruit Exchange against certain railroads. We could first perhaps take the appearances. Mr. Call and Mr. Matthews, you appear for the complainants. Mr. Durbrow, you appear for the Southern Pacific Company?

Mr. Durbrow: Yes sir.

Commissioner Prouty: Do you represent any other defendants?

Mr. Durbrow: No sir.

Commissioner Prouty: Is there any appearance with you for the Southern Pacific Company?

Mr. Durbrow: Upon the former hearing, and as appearing upon the record, are Mr. F. C. Dillard and Mr. P. F. Dunne, and myself, and we appear upon the briefs.

Commissioner Prouty: Who appears for the Santa Fe this morning?

Mr. Durbrow: Mr. Norton and Mr. Camp.

Commissioner Prouty: Is there any appearance for the San Pedro & Los Angeles road?

Mr. Durbrow: Mr. Halsted will be here in a few moments.

Commissioner Prouty: Are there any other appearances for
3 the defendants (no response)? You will remember, gentlemen, that this hearing was continued as to the matter of the icing charges, for the purpose of permitting the making of certain tests by the experiments of the Commission. There was a very sharp divergence of opinion between the shippers and the defendants as to the quantity of ice consumed in icing these cars, and also as to whether cars could be pre-cooled and sent on without re-icing. Now, the Commission has, through its inspectors, taken steps to ascertain the quantity of ice consumed in the icing of cars during certain weeks over the Santa Fe, and we have also asked for reports from those cars which were pre-cooled and sent through to destination without re-icing. In view of what has been disclosed by our experiments and what appears from these reports, the Commission would be glad to hear anything which either of the parties have to say on the subject of these icing charges. Mr. Call, you might indicate what you think might profitably be shown on the part of the shippers.

Mr. Call: I do not know that I have anything to add. We had prepared some compilations simply or perhaps the same information that the Commission already has, and have had it prepared in a tabulated form for convenience of reference, showing the amount of ice used in general refrigeration during the weeks in which
4 we kept the weights, and also to show the condition of our pre-cooled and pre-iced cars on arrival, in tabulated form from the different plants. There is a little difference in plants. We also propose to show further the comparative amounts of ice used by the carriers under their different methods, general refrigeration, and through their pre-cooling plants, with an idea of showing perhaps the value of their pre-cooling methods. And our tests go a little farther than that, covering the other line; whereas the inspectors of the Commission cover only the Santa Fe, ours cover both lines. We thought of introducing that also, in the way of additional information.

Now, with regard to these pre-cooling propositions, our thought was simply to meet the suggestions of counsel for the defendants and the Commission, and furnish this information—perhaps not so much with a view of asking for an order establishing the *the* right of the shippers to pre-cool, because we have felt that we had that right, but simply in the way of negativing the assertions of the defendants that we could not do it successfully. Our records show that we can do it successfully. I do not know that our records will show that we can do it much better than general refrigeration this year, because this year the fruit all through has carried very well; it has been
5 an unusually good year for the carrying quality of the fruit, and it perhaps does not show as much superiority for the pre-cooling method as it would some other years, but it shows that it

carries fully as well and perhaps a little bit better than general refrigeration, even this year. This was simply, as I say, to meet the contention of the defendants that we could not do it successfully in that way, and not for the purpose of substantiating our right to do it, which we thought had been granted by the defendants and by the law—the right to do it.

Commissioner Prouty: You say the right to do it. Do you mean by that the right to pre-cool without the payment of the pre-cooling charge?

Mr. Call: No, but the right to precool and pre-ice on the payment of what would be a proper charge for the service rendered by the defendants.

Commissioner Prouty: You ask the Commission to determine what would be a proper pre-cooling charge?

Mr. Call: Yes sir; to determine what would be a proper charge for the service rendered for that particular branch of industry.

Commissioner Prouty: Now, Mr. Call, I think you should
6 offer exactly what you desire to introduce, and we will see what the defendants have to say as to that testimony. We will also see how far it corresponds with the information obtained by the Commission.

Mr. Call: Mr. Matthews has this particular matter especially in charge, and he will offer the testimony.

Mr. Matthews: We haven't the record quite complete in regard to the actual price paid for ice. We have a number of contracts, but we haven't the agreed contract price at all the places where it is done. Some of these contracts have various conditions; often the price of the ice is based upon the price of the average quantity used. Therefore we have prepared a motion to have the Pacific Fruit Express and the Santa Fe Dispatch furnish a general tabulation showing the actual prices paid for the ice.

Commissioner Prouty: There are some cases where the ice is manufactured by the company, are there not?

Mr. Matthews: They know the cost of that.

Commissioner Prouty: Take the San Bernardino plant of the Santa Fe. Does the refrigerator company pay the Santa Fe Company for the ice so much a ton? Mr. Camp, do you know?

Mr. Camp: We pay at the different icing stations the prices
7 as fixed by contract for ice, so much per ton.

Commissioner Prouty: Does that include the plant at San Bernardino?

Mr. Camp: Yes, that includes San Bernardino.

Commissioner Prouty: And do you pay so much for pre-cooling at San Bernardino?

Mr. Camp: I can not now recall the terms of the pre-cooling contract.

Commissioner Prouty: Perhaps Mr. Leeds can tell us.

Mr. Leeds: Based on an equivalent in refrigeration, based on the pre-cooling and icing rather—the price fixed on that.

Commissioner Prouty. So that the refrigeration company pays the

Santa Fe Company so much for pre-cooling the cars, and pays so much a ton for the ice used at San Bernardino, does it?

Mr. Leeds: Per ton for refrigeration as well.

Commissioner Prouty: I understand.

Mr. Camp: I don't understand that it pays the Santa Fe Company.

Mr. Leeds: Practically—yes; just the same as they pay for the ice themselves. The price is fixed by the cost of manufacturing.

Commissioner Prouty: Mr. Matthews asked some figures
8 which will show the cost of ice. Is San Bernardino one of those points?

Mr. Matthews: Yes sir; San Bernardino, Colton, and Los Angeles.

Commissioner Prouty: Those are the three points?

Mr. Matthews: There are quite a number of tests—every point at which ice tests were made, either on the Southern Pacific or the Santa Fe—eight or nine points altogether.

Commissioner Prouty: Mr. Matthews asks for the price which the refrigeration company pays for ice at San Bernardino, are you prepared to furnish that information, Mr. Camp?

Mr. Camp: Yes, we can give that.

Commissioner Prouty: And also at all these other points?

Mr. Camp: We can give it of every point.

Mr. Matthews: May we ask for the tabulation by the Commission?

Commissioner Prouty: Now, gentlemen, when that tabulation is filed it is liable to raise very serious questions, and if possible I think we ought to know before we close this case on the facts, how
9 these prices are arrived at. There at San Bernardino is a very expensive plant, put in by the Santa Fe and operated by the Santa Fe. Now, if you are content to take——

Mr. Matthews: We prefer to have it right now, your Honor, of course.

Commissioner Prouty: If you are content to take any figures they give, why I will let the thing rest, and they may explain those figures.

Mr. Matthews: We prefer to have it right now.

Commissioner Prouty: Can you give, Mr. Camp, or will you be prepared during the hearing to give the cost of ice at all points between Los Angeles and Ogden?

Mr. Camp: We can give them now—the price paid by the Refrigerator Dispatch Company for ice at those points.

Commissioner Prouty: I think the better way is to do it now. You call the points, Mr. Matthews, and we will take the list.

Mr. Matthews: We will furnish counsel with a list of the points.

Mr. Camp: It will be here in the course of fifteen minutes.

Commissioner Prouty: Mr. Durbrow, with reference to the Southern Pacific Company, are you prepared to show the
10 price paid for ice by the Pacific Fruit Express?

Mr. Durbrow: Mr. Secrist says he can furnish that information after the noon recess. At many points—there are quite a number of them—we can not give the exact information, but we will have that after the noon recess.

Commissioner Prouty: Have you filed, Mr. Matthews, with the Santa Fe and the Southern Pacific a list of the stations at which you desire this information?

Mr. Matthews: I have served a copy of the notice on Mr. Durbrow and Mr. Camp.

Commissioner Prouty: After the noon adjournment we will ask you to be prepared to furnish those figures.

Mr. Durbrow: We will be ready.

Commissioner Prouty: We will pass that until then.

Mr. Matthews: We will call Mr. Dezell.

11 E. G. DEZELL was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Matthews: Mr. Dezell, will you state what your business is?

Mr. Dezell: I am assistant manager of the California Fruit Growers' Exchange.

Mr. Matthews: Have you charge of the records that have been sent in with reference to these tests on pre-cooled cars and on the refrigerated cars?

Mr. Dezell: I have.

Mr. Matthews: Have you prepared a statement showing the quantity of ice used at each station over the Santa Fe road at which these tests were made under the direction of the commissioner.

Mr. Dezell: I have.

Mr. Matthews (Showing paper to witness): Will you state how that was made up?

Mr. Dezell: This was taken from a joint report of the Commission inspector, the car line inspector, and ours. We took the number of cars that were iced at each station each week, the total
12 number of pounds supplied those cars, and carried it through for each week, giving the total for the four test weeks.

Commissioner Prouty: Now, those weeks, were the week ending April 30th—they were the last weeks in April, May, June and July. You have put these all together?

Mr. Dezell: It shows them separately for each week, and the total for the four weeks.

Commissioner Prouty (Referring to paper): Oh yes. Second test—by that you mean the first week, second week, third week, and fourth week?

Mr. Dezell: Yes sir.

Mr. Matthews: Does the tabulation show all cars, or did you exclude any?

Mr. Dezell: It excludes any pre-cooled cars, and any cars that were not initially iced at San Bernardino.

Commissioner Prouty: What do you mean by pre-cooled cars?

Mr. Dezell: Cars pre-cooled by the railroad, that were reiced in transit, our cars billed out by us, billed "don't re-ice."

Commissioner Prouty: You say this does not include cars pre-cooled by the railroad and re-iced in transit?

Mr. Dezell: No sir.

13 Commissioner Prouty: What is the total number of cars that were pre-cooled by the railroad—do you know?

Mr. Dezell: No, I could not answer that. I have not made that calculation.

Mr. Matthews: We have a separate tabulation of that, your Honor.

Commissioner Prouty: Just proceed to introduce it.

Mr. Matthews: I will ask that this be marked, Complainant's Exhibit 66.

(Said paper received in evidence, marked Complainant's Exhibit No. 66, September 9, 1910, and same is attached hereto.)

Mr. Matthews: Have you prepared a statement showing the total quantity of ice used per car during the time of those tests?

Mr. Dezell: I have.

Mr. Matthews: On the cars that went through to Argentine?

Mr. Dezell: Yes sir.

Mr. Matthews: Was that prepared from the same records?

Mr. Dezell: Yes sir. This is on a different basis, however. It takes into consideration only the through cars, those cars that passed through all these stations.

Commissioner Prouty: You mean by that, the cars that

14 were iced at Los Angeles?

Mr. Dezell: At San Bernardino to Argentine, inclusive.

Mr. Matthews: Those that were iced at every icing station between California and Argentine?

Mr. Dezell: Yes sir; excluding pre-cooled cars and those that were not initially iced at San Bernardino.

Mr. Matthews: That shows 19,955 pounds average from California to Argentine. I will ask that that be marked Exhibit 67.

(Paper received in evidence and marked Complainant's Exhibit 67, September 9, 1910, and attached hereto.)

Mr. Matthews: What happened to the other cars which are not included in that last record?

Mr. Dezell: They either were billed short at destination, or over other routes than the regular through route, or were not initially iced at San Bernardino, or were pre-cooled.

Mr. Matthews: Was there any delay during those tests?

Mr. Dezell: There was a washout during the last test that delayed a couple of trains, about thirty-five cars.

Mr. Matthews: Did you ascertain how much more ice that

15 required, that delay?

Mr. Dezell: Somewhere around one hundred thousand pounds.

Mr. Matthews: Where was that delay?

Mr. Dezell: It was between Seligman and Winslow. Some cars held at Seligman, and others stopped at Needles and were held there until the line was opened.

Mr. Matthews: How much more ice did that delay occasion, according to that record?

Mr. Dezell: Some of them were delayed nearly three days. I think about fifteen hundred pounds per day.

Mr. Matthews: About fifteen hundred pounds per day?

Mr. Dezell: Yes.

Mr. Matthews: Have you prepared a statement showing the quantity of ice used at each station on the Southern Pacific road, moving via Ogden, during that same period?

Mr. Dezell: I have.

Mr. Matthews: How was that made up?

Mr. Dezell: That is on the same basis as the first exhibit, and covers all cars that were iced at the icing stations from Colton to Waterloo or Clinton, Iowa, except pre-cooled cars and those not initially iced at the initial stations, Los Angeles or Colton.

16 Mr. Matthews: That statement was made up from records kept by you?

Mr. Dezell: It was made up from the joint reports made by our inspectors and the inspectors of the Pacific Fruit Express.

Mr. Matthews: Agreed to by the Southern Pacific Company?

Mr. Dezell: Signed by both of them.

(The paper last referred to offered in evidence and received, and marked Complainant's Exhibit 68, September 9, 1910, and attached hereto.)

Mr. Matthews: Have you prepared from the same records a statement showing the total ice used on that road from Los Angeles to Chicago?

Mr. Dezell: I have.

Mr. Matthews: What does that show as the average quantity of ice used per car?

Mr. Dezell: For the 112 cars, through cars, that passed all of those stations during the four different tests, it shows an average of 24,535 pounds.

Mr. Matthews: That shows more ice than on the Santa Fe?

Mr. Dezell: It does.

17 (Paper last referred to, offered and received in evidence, marked Complainant's Exhibit 69, September 9, 1910, and attached hereto.)

Mr. Matthews: Will you explain the difference in conditions under which those tests were made, which would explain in a measure the additional quantity of ice used?

Mr. Dezell: The cars of the Pacific Fruit Express take initially about a ton more of ice than the R. D. cars, and the Commission did not have their inspectors along the line, and the test was not as accurate as it was on the Santa Fe. At Roseville and Sacramento they used natural ice, and it is difficult to estimate the ice that goes into the tank, and it was more or less of a guess. They measured how much it took either by eye or a measuring stick.

Mr. Matthews: None of that ice was weighed, that you know of?

Mr. Dezell: There were several tests made by weighing, and the aggregate showed that there was a little less ice put in than was estimated. Naturally it showed more.

Mr. Matthews: You made a certain allowance of so many pounds at a certain estimate, then, according to the measuring stick?

Mr. Dezell: Yes sir.

18 Mr. Matthews: Have you prepared a record of the temperature for the week in which the tests were made as compared with the average temperature during the month, and the average temperature during each week?

Mr. Dezell: I have. This was taken from the government weather reports and show the average maximum and minimum and the mean temperature for each week during these four months. These tests on the Santa Fe were all made in the last week of each month, and generally the weather is hotter than in the other three weeks, on an average, for the month. It shows that with the exception of July; the last week in July being cooler than the average for the entire month.

Mr. Matthews: I ask that that be marked.

(Paper here referred to offered and received in evidence, and marked Complainant's Exhibit 70, September 9, 1910, and same is attached hereto.)

Mr. Matthews: Have you kept any record of the amount used on the southern route, via El Paso?

Mr. Dezell: We attempted to do so, but have it only for the first week. There were not many cars moving there. We had

19 inspectors only at Ft. Worth, and they would not allow our inspectors to inspect our competitors' shipments, and the P. F. E. men would have nothing to do with the S. F. R. D. cars, and that left practically nothing to inspect. We have it for the first week is all.

Mr. Matthews: How many cars did you make the test on?

Mr. Dezell: Twenty-five cars.

Mr. Matthews: What did it show per car?

Mr. Dezell: An average of 19,738 pounds to Fort Worth.

Commissioner Prouty: What route would those cars take beyond El Paso?

Mr. Dezell: Texas Pacific.

Mr. Matthews: In the fruit business what per cent of decay is considered as sound?

Mr. Dezell: Well, anything not exceeding three per cent. Three per cent is considered sound.

Mr. Matthews: Have you kept a record also of the movement of pre-cooled and pre-iced cars, pre-cooled and pre-iced by the shippers?

Mr. Dezell: Yes sir.

Mr. Matthews: Those records were made up in what way?

Mr. Dezell: Well, we received reports from our parties in each case of the cars as they passed, with the seal record, and at destination we had the usual arrival and inspection reports and the seal record there.

20 Mr. Matthews: How many cars were shipped from East Highlands pre-cooled and pre-iced by the shipper during 1910?

Mr. Dezell: One hundred and twenty-four cars.

Mr. Matthews: Were any of those cars decayed in transit?

Mr. Dezell: All of them were sound or practically sound. None of them showed over three per cent decay.

Mr. Matthews: So the East Highlands plant had a perfect record?

Mr. Dezell: Perfect.

Commissioner Prouty: When you said that anything not over three per cent decay is counted as sound, what do you mean by that—that an orange that has some decay, but not three per cent, would sell for as much as an orange without any decay?

Mr. Dezell: Well, it is figured by the box. They figure that a box of oranges that has not over three per cent decay, it is a very small amount of decay, and they do not ask for an allowance.

Commissioner Prouty: These oranges are sold sometimes at auction, sometimes at private sale. Now, do you say that a carload which is somewhat decayed, but does not show three per cent decay, will sell for as much as a carload which does not show any decay at all?

21 Mr. Dezell: Well, in the auction market it might make some difference, but in the private sale market it would not, in my opinion. That is the way we sell them. The sales are made by box, and they inspect the boxes, and if the boxes do not show more than three per cent decay they will not ask for an allowance.

Commissioner Prouty: Take the cars actually shipped from the Highlands plant; do you recall the price received for the fruit?

Mr. Dezell: Our records show it.

Commissioner Prouty: Was it the price of sound fruit?

Mr. Dezell: No allowance was made for decay.

Commissioner Prouty: Proceed.

Mr. Matthews: Have you prepared a statement of cars pre-cooled and pre-iced at Pomona, California, shipped from the Pomona Exchange?

Mr. Dezell: I have.

Mr. Matthews: How many cars were shipped?

Mr. Dezell: A total of 207 cars, to and including August 20th, 1910. There was some since then, but the records are not complete.

Mr. Matthews: How many of those 207 cars show to be full three per cent decay?

Mr. Dezell: Seven of them.

Mr. Matthews: The statement you prepared shows some reasons that will account for that decay, does it not?

22 Mr. Dezell: Of those seven, five of them arrived at original destination showing that some door or hatch had been opened; they were not under original seal security. Two of them, however, were under original seals.

Mr. Matthews: And those were twenty-four and sixteen days on the road respectively?

Mr. Dezell: They were—to final destination.

Mr. Matthews: How many cars were pre-cooled and pre-iced at Pasadena?

Mr. Dezell: Seven cars.

Mr. Matthews: Any decay in those?

Mr. Dezell: One car showed seven per cent decay.

Mr. Matthews: Any reason for that?

Mr. Dezell: Arrived with two hatch seals broken. It was twenty days en route at the time the inspection was made.

Mr. Matthews: We ask that the Pomona record be marked as an exhibit.

(Paper here referred to offered in evidence and received, and marked Complainant's Exhibit 71, September 9, 1910, and attached hereto.)

23 Mr. Matthews: I will ask that the Pasadena record be also marked.

(Paper last referred to offered and received in evidence, and marked Complainant's Exhibit 72, September 9, 1910, and same is attached hereto.)

Mr. Matthews: Were any cars shipped from Upland this year?

Mr. Dezell: Thirty-two cars.

Mr. Matthews: That is a new shipper's plant, is it not?

Mr. Dezell: Yes sir. The plant was not completed until along in the season some time.

Mr. Mathews: How many of those thirty-two cars arrived showing over three per cent decay?

Mr. Dezell: Three showed over three per cent decay.

Mr. Matthews: Any reason for those three?

Mr. Dezell: They all arrived under original seal. I have checked up these cars, and they were not the fruit of the association that owns the plant. It was fruit that had been brought over from some other association, except half of one of the cars, and that half was sound; the other half of the fruit was supplied by another association, and showed decay.

24 Mr. Matthews: We will ask for further testimony on that. We will ask that that be marked.

(Paper last referred to offered and received in evidence, marked Complainant's Exhibit 73, September 9, 1910, and same is attached hereto.)

Mr. Matthews: Have you prepared a record of cars pre-cooled and pre-iced at Los Angeles?

Mr. Dezell: Yes sir.

Mr. Matthews: How many cars during the year?

Mr. Dezell: Four hundred and twenty-five, including July 6th. There were a few since then, but the records are not given on that.

Mr. Matthews: How many cars showed decay?

Mr. Dezell: Thirty-one.

Mr. Matthews: Have you put on that statement the reasons, if any exist, by which the decay might be occasioned?

Mr. Dezell: The statement shows whether or not they arrived at original destination under original seal security. A great many of them did not; some of them did.

Mr. Matthews: There are two cars showing fifteen and twenty per cent decay. Will you explain?

Mr. Dezell: That is only on one grade in each car, and it developed that that was fruit that had been picked up.

25 Mr. Matthews: Will you explain what picked up fruit means?

Mr. Dezell: Fruit dropped from the trees.

Mr. Matthews: Is it usual to have a large percentage of decay in fruit of that kind?

Mr. Dezell: Generally, yes sir.

Mr. Matthews: Will you state to the Commission what the conditions are at the Los Angeles plant that are different from the conditions at the plants of the Pomona Exchange and the Highlands Exchange?

Mr. Dezell: Well, the associations have to load their fruit and ship it in here and have it unloaded. The train that brings the fruit in passes most of the stations that ship in here about noon, and the fruit that is loaded today would mostly have been packed yesterday afternoon and would not get in until tonight and not be unloaded until tomorrow morning, or possibly during the night. There is a delay of twenty-four, and in some cases forty-eight hours before it goes into cold storage. And then the conditions at the plants are not ideal. They have Russian labor, and it is hard to get them to understand that they must handle fruit carefully. It takes a great deal more handling than at the other plants, and there is delay in getting into storage.

Commissioner Prouty: How long is that fruit in cold stor-

26 age before it is put into the car?

Mr. Dezell: For pre-cooling they put it in for two or three days.

Commissioner Prouty: That is here at Los Angeles?

Mr. Dezell: Yes.

Commissioner Prouty: You have a contract with some company here in Los Angeles to pre-cool the fruit, haven't you?

Mr. Dezell: Yes sir.

Commissioner Prouty: What is the contract price per box?

Mr. Dezell: Five cents per box.

Commissioner Prouty: Does that include the ice which is placed in the car afterwards?

Mr. Dezell: No sir; we pay for that separately.

Commissioner Prouty: You pay five cents a box, and then pay by the ton for the ice?

Mr. Dezell: Yes sir.

Commissioner Prouty: What do you pay for the ice?

Mr. Dezell: Two and a quarter per ton for the ice put in the car.

Commissioner Prouty: Is that in the bunkers?

Mr. Dezell: In the bunkers—yes sir.

Commissioner Prouty: Now, just what does that five cents and two and a quarter include?

27 Mr. Dezell: Well, they unload the cars.

Commissioner Prouty: That is, they unload the car which is shipped in here?

Mr. Dezell: Yes sir; pile it up in the storage house, pre-cool it, load it again, ice the car, in fact, all the service.

Mr. Matthews: These 420 cars on this last statement as being pre-cooled at Los Angeles, were pre-cooled under that contract, were they not?

Mr. Dezell: Yes sir.

Mr. Matthews: Have you prepared a tabulation showing the percentage of decay in the total shipment of such cars?

Mr. Dezell: On the pre-cooled cars made through the California Fruit Growers' Exchange.

Mr. Matthews: That is just a synopsis.

Commissioner Prouty: Does this last statement show the date of shipment of these cars that were pre-cooled at Los Angeles?

Mr. Dezell: Yes sir; it does on the ones that showed decay. This is not a complete list of all the cars.

Commissioner Prouty: During what part of the season were those shipments made mostly?

Mr. Dezell: Well, April 8th, June 13th, June 17th. June 17th seems to be the last one.

28 Commissioner Prouty: Do you as a practical matter advocate the making of pre-cooled shipments through the Los Angeles contract here in June and July and August?

Mr. Dezell: We do it—yes sir. We had shipments in those months. The last one that showed decay was shipped June 17th. This statement, though, includes all the decay cars up to those that were shipped in July, up to July 6th.

Commissioner Prouty: Now, in view of the amount of decay which has been found in the case of these shipments pre-cooled at Los Angeles, do your shippers still desire to continue making such pre-cooled shipments?

Mr. Dezell: I think they would, but they have withdrawn this storage in transit privilege, and of course they cannot.

Commissioner Prouty: Assuming that they could, would they desire to do that?

Mr. Dezell: Yes sir; I think they would.

Commissioner Prouty: You say the storage in transit privilege has been withdrawn, so that you can no longer ship to Los Angeles and re-load here?

Mr. Dezell: Yes sir.

Mr. Matthews: Have you prepared a statement showing the extent of decay in the regularly iced shipments consigned to

29 the California Fruit Growers' Exchange?

Mr. Dezell: Yes sir.

Mr. Matthews: How many cars were shipped?

Mr. Dezell: This covers all the shipments under regular refrigeration for April, May, June, July; total 5,201 cars.

Mr. Matthews: Two hundred and eighty-four cars showed over three per cent decay?

Mr. Dezell: Yes sir.

Mr. Matthews: Is that greater or less per cent than shipments pre-cooled and pre-iced?

Mr. Dezell: Slightly greater.

Commissioner Prouty: Now, are those cars pre-cooled by the railroad companies at San Bernardino and Colton?

Mr. Dezell: Which ones?

Commissioner Prouty: The ones included in this last statement. You call those regularly iced cars

Mr. Dezell: Practically none of such shipments were pre-cooled at the railroad plants.

Commissioner Prouty: They were sent under refrigeration without being pre-cooled?

Mr. Dezell: Yes sir; under regular refrigeration.

Commissioner Prouty: You say that the fruit exchange did not as a rule pre-cool its shipments at Colton and San Bernardino?

30 Mr. Dezell: No sir.

Commissioner Prouty: Why not?

Mr. Call: I can answer that better—because it was under my advice that they did not do it, and it was perhaps due to a misapprehension. I thought that they would put the responsibility on us, if it was done at our request, and we were afraid that it would freeze the fruit. But the railroad men tell me that I was mistaken about that, and that they did not so intend the tariff sheet to read, but they meant by that that they would assume all the ordinary risks, the same as they would under refrigeration. If we had so understood it, we would have done more of that, and especially for experimental purposes.

Mr. Camp: As I understand it, you advised the fruit exchange not to allow the Santa Fe to pre-cool any cars?

Mr. Call: That was my idea, not to allow the Santa Fe or the Southern Pacific for that reason, that we thought we would have to take the risk, and the fruit would be frozen. That is the way it read in the tariff, as I understand it.

Commissioner Prouty: Proceed.

Mr. Matthews: Have you prepared a statement showing the amount of that?

31 Commissioner Prouty: I suppose we will hear from somebody the number of cars that were pre-cooled at these plants, and the condition in which they went through, and all that.

Mr. Matthews: Have you prepared a statement showing the amount of ice supplied each car in the shipments pre-cooled by the railroads?

Mr. Dezell: I have.

Mr. Matthews: These were Exchange cars, were they?

Mr. Dezell: No sir; they were not Exchange cars.

Mr. Matthews: How were the records obtained?

Mr. Dezell: We secured the numbers of the cars that were pre-cooled during the weeks that these joint tests were to be made.

Commissioner Prouty: These cars are cars that were cooled at San Bernardino, are they?

Mr. Dezell: Colton—I have one for each, though.

Mr. Matthews: I would like to have these papers marked.

(The papers here refrrred to were offered in evidence and received, and marked respectively Complainant's Exhibits 74 to 77 inclusive, September 9, 1910, and are attached hereto.

Mr. Matthews: How does that compare with the regularly
32 refrigerated shipments you have over the same route, at the same time?

Mr. Dezell: Compared with the regularly refrigerated shipments in each test week, those pre-cooled by the railroad and re-iced in transit took 20,421 pounds per car, while the regularly iced shipments took 22,207. That matter is not shown on this statement.

Mr. Matthews: Showing a saving of about one ton?

Mr. Dezell: About one ton of ice. In the second week it was 22,865 as against 24,836.

Mr. Matthews: Have you prepared a similar statement showing the amount of ice supplied en route over the Santa Fe?

Mr. Dezell: I have.

Mr. Matthews: On the cars pre-cooled by the railroad company?

Mr. Dezell: I have. This plant was not in operation until June 6th, and all of this information was taken from the joint reports made by the Interstate Commission inspectors and the car line inspectors and ours. (That shows an average of 17,512 pounds as against the regularly iced cars for the same week of 20,911 pounds.)

Mr. Matthews: About a ton and a half saved?

Mr. Dezell: About that. The last week, 20,646 pounds as
33 against 23,945 pounds.

Mr. Matthews: I will ask that this be marked.

(Paper here referred to offered and received in evidence, marked Complainant's Exhibit No. 78, September 9, 1910, and same is attached hereto.)

Commissioner Prouty: Do you know how much the charge for pre-cooling those cars was? Was it all done for the icing charge, the regular icing charge?

Mr. Dezell: Regular icing charge.

Commissioner Prouty: That is to say, during this last season the railroad company iced these cars or pre-cooled the cars for the same charge?

Mr. Dezell: Yes sir.

Commissioner Prouty: It being at the election of the shipper whether the car should be pre-cooled and iced, and kept iced, or whether it should be sent through entirely under ice without any pre-cooling?

Mr. Dezell: Yes sir.

Commissioner Prouty: And your association almost without exception, under the advice of counsel, has elected to have the cars sent through under ice without precooling?

Mr. Dezell: They did last season—this season.

Commissioner Prouty: Now, in the case of the few cars
34 that were pre-cooled, in what condition did those cars reach their destination—do you know about that?

Mr. Dezell: No, I have not checked that up.

Commissioner Prouty: So that your company has today no practical idea of the advantage of pre-cooling these cars at San Bernardino or Colton?

Mr. Dezell: No sir.

Mr. Matthews: We will have some evidence on that, your Honor. What do you say as to whether the buyers or the persons to whom you supplied the fruit preferred pre-cooled cars? Have you received any information in regard to that?

Mr. Dezell: We have had from some of our agents letters and telegrams stating that the buyers gave them preference.

Commissioner Prouty: You mean by that, cars pre-cooled by the shipper?

Mr. Dezell: Yes sir.

Commissioner Prouty: Or pre-cooled at Los Angeles?

Mr. Dezell: Yes sir.

Commissioner Prouty: Now, do you mean by that, that the buyer preferred the pre-cooled car to the car which is kept iced all the way through?

Mr. Dezell: They stated that they gave the pre-cooled ship-
35 ments the preference.

Mr. Matthews: How were these cars loaded that were pre-cooled by the shippers?

Mr. Dezell: With very few exceptions, they were loaded seven wide and two high.

Mr. Matthews: What was the record that has been introduced with reference to the amount of ice supplied in transit to the cars pre-cooled by the railroad—what does that indicate to you?

Mr. Dezell: It indicates that they were not cooled or they would not have taken so much ice en route.

Mr. Matthews: That is, they are not getting the temperature at the pre-cooling points?

Mr. Dezell: They are not getting the temperature all the way through the load in the box.

Mr. Matthews: Have you kept a record of the amount of ice put in the cars by the railroad at Corwith, destined to Chicago?

Mr. Dezell: We stationed a man at that point and had him take the usual record.

Mr. Matthews: That record was made on these same cars that the tests were made on, under the direction of the commission?

Mr. Dezell: It included all cars that passed that station?

Mr. Matthews: What was the average amount of ice used
36 at Chicago?

Mr. Dezell: A little less than a ton, as I remember it.

Mr. Matthews: How many cars were the tests made on?
Mr. Dezell: One hundred and forty-six cars reported on.
Mr. Matthews: The average ice used was how much?
Mr. Dezell: 1,963 pounds.
Mr. Matthews: A little less than a ton. I think that is all.

Cross-examination:

Mr. Durbrow: I want to direct your attention in the first instance, please, to your exhibit which has been marked Complainant's Exhibit 66.
Mr. Dezell: Yes sir.
Mr. Durbrow: I will ask you to state, please, what is meant by the words "excluding pre-cooled cars and cars not initially iced at San Bernardino"? I don't understand that.
Mr. Dezell: We excluded the pre-cooled cars—either cars pre-cooled by the shipper—billed "don't ice" or pre-cooled by him. Cars not initially iced would be either not iced or that did not take full capacity at initial station.
Mr. Durbrow: What is the farthest eastern point at which
37 you have made any tests?
Mr. Dezell: On the Santa Fe, it includes Argentine.
Mr. Durbrow: That is in the vicinity of Kansas City, is it not?
Mr. Dezell: Yes sir.
Mr. Durbrow: So far as the Southern Pacific Company is concerned, have you made any tests further east than the Missouri River?
Mr. Dezell: At Waterloo and Clinton.
Mr. Durbrow: That carries you on to the Mississippi River?
Mr. Dezell: Yes sir.
Mr. Durbrow: That is as far east as your tests have gone?
Mr. Dezell: Yes sir.
Mr. Durbrow: I see that is the same with your exhibit No. 67?
Mr. Dezell: No. Exhibit No. 67 was made on a different basis. We did not exclude these cars that went through, that were iced at each station, at all stations.
Mr. Durbrow: I understand, but what I mean is, that the farthest eastern point you have used is Argentine?
Mr. Dezell: Yes sir.
Mr. Durbrow: And that is the same all through with Ex-
38 hibit 68?
Mr. Dezell: Waterloo and Clinton.
Mr. Durbrow: Now, referring to your exhibit 69, please, you state that this test is not as accurate as that made on the Santa Fe, and there had been a good deal of guesswork. I ask you to specify wherein the table or statement is defective. I want to get how accurate it is, how far we can depend upon it.
Mr. Dezell: At points west of Roseville they used natural ice, while the Santa Fe used manufactured ice, and in estimating the weight we could not do that with natural ice, which came in various sized pieces, and they had to estimate and average it, and figure how much ice each one would take. And then at Roseville, where

they have manufactured ice, they estimated the average rather than counting the cakes. The Southern Pacific put in a fast schedule via Sacramento, which did not allow the ice people much time—they had to put it in any way they could, and did not have time to check each cake in as the Commission inspectors insisted that they do on the Santa Fe.

Mr. Durbrow: Now, this table Exhibit 69 refers to shipments that were routed by the Ogden route of the Southern Pacific Company. Have you any showing relating to the southern route or through El Paso?

39 Mr. Dezell: I have explained that we started, and that the second test week we had trouble.

Mr. Durbrow: I mean on the Southern Pacific; that was on the T. & P.

Mr. Dezell: That was the Southern Pacific and T. & P., extending clear through to Fort Worth.

Mr. Durbrow: Did you get anything on the Rock Island?

Mr. Dezell: No sir; we did not.

Mr. Durbrow: This, like Exhibit 68, only goes as far as Clinton?

Mr. Dezell: Yes sir.

Mr. Durbrow: Now, in all the statements we have spoken of now, you have excepted or excluded pre-cooled cars and cars that were not initially iced at the plants of either the Santa Fe or Southern Pacific?

Mr. Dezell: Yes, sir.

Mr. Durbrow: And have you any record at all of cars that were pre-cooled at the shippers' plant, or where they were initially iced there?

Mr. Dezell: At the shippers' plant?

Mr. Durbrow: No, I mean at the carriers' plant.

Mr. Dezell: There is a table here later showing the ice consumed by those cars at the original plants.

40 Commissioner Prouty: Showing a few cars, fourteen or fifteen at Colton, and a few more at San Bernardino.

Mr. Durbrow: Now, referring to the table, Exhibit 71, the statement of cars pre-cooled and pre-iced at Pomona, California, you show that there was a total of seven cars showing over three per cent decay, and that a total of 200 cars were found practically sound. Do you know whether any of these seven cars that showed this decay were diverted en route?

Mr. Dezell: I know that this last one was, to Savannah, because I remember the car; but I could not say as to the others.

Mr. Durbrow: Do you know whether they were held at any point en route for consignment to another point?

Mr. Dezell: I could not say. I could say from the length of time that the next to the last one was held up somewhere.

Mr. Durbrow: Can you state if any of the seals on these five cars which arrived with seals broken were inspected en route, for the purpose of enabling you to effect a sale of the commodity contained in the cars?

Mr. Dezell: That seal record is at original destination, and was not inspected by us before that.

Mr. Durbrow: How about these points at which they were held?

Mr. Dezell: That is original destination—the seal record.

41 The decay is at final destination, but we take the seal record of original destination on arrival there.

Mr. Durbrow: Yes, but, for instance, you say this car to Savannah was diverted and taken there for disposition. Now, you may have broken the seals there yourselves at the original destination.

Mr. Dezell: That Savannah car arrived under original seals. It laid at Memphis and was inspected there and sent on to Savannah.

Mr. Durbrow: How about the other cars?

Mr. Dezell: They are all the same. This is the seal record at original destination. If we broke the seals at original destination it would still show it as arriving under original seals.

Commissioner Prouty: Mr. Durbrow asks you, if your people broke the seal, it would not appear whether the seal was broken by the railroad or some other person.

Mr. Dezell: In each of these cases where it shows hatch seals broken, it was not done by us.

Commissioner Prouty: That is to say, you did not break the seals for the purpose of showing a prospective purchaser the contents of the car?

Mr. Dezell: Well, the seal record is that of the car as it arrived at original destination, the first opportunity we have to get at it.

42 Then we might have broken the seal.

Commissioner Prouty: What do you mean by original destination—the destination to which the car was billed?

Mr. Dezell: The first destination the car reached—the first opportunity we had to inspect it.

Commissioner Prouty: That is the first time you looked at the car?

Mr. Dezell: Yes sir.

Mr. Durbrow: Now, have you a record, an office record, of those cars, so that we could determine where the seals were broken, or any further light on that subject?

Mr. Dezell: We have kept a record as far as we could from inspection reports, giving the seal record from all inspection stations that we have, and on a great many of them it would show where the seal was broken. And others we can tell by the number of the seal itself on what road it was broken, probably at what point.

Mr. Durbrow: Will you kindly furnish us that data? We would like very much to have it.

Mr. Dezell: Do you want it on the seven cars?

Mr. Durbrow: Yes sir.

Mr. Dezell: I can do that very easily.

43 Mr. Durbrow: And also we would like to have a record, if you have it, showing the length of time these cars were held at different points en route; for instance, at the original destination, before they were ordered through to any other point.

Mr. Matthews: By "these cars" you mean the seven cars?

Mr. Durbrow: The seven cars only—I think that will answer the purpose. And likewise with your statements which have been marked 72 and 73, with those cars only where it shows they arrived with some decay. One was a statement of cars pre-cooled at Pasadena, and the other at Upland.

Mr. Dezell: All right.

Mr. Durbrow: Now, in that connection, I would like to ask you if, in conducting these tests, the Fruit Growers' Exchange has endeavored to route the cars shipped by them, pre-cooled and pre-iced at their plant, with instructions not to re-ice in transit, through to a destination without diverting in transit.

Mr. Dezell: You say, to route them——

Mr. Durbrow: Maybe I can make it plainer. Here is the proposition. There have been certain cars shipped from Los Angeles or the southern territory to destined points, where you have undertaken to pre-cool and pre-ice the shipments at your plants,
44 and you have instructed the carriers not to re-ice the shipments in transit. Now, in conducting these tests, has the California Fruit Growers' Exchange so regulated its business and so routed those cars that those cars have not been held for disposition, or have not been diverted?

Mr. Dezell: No, there is no difference that I know of. They go according to the orders that they were filling, and they are billed all over the country, same as regular shipments.

Commissioner Prouty: Have all the cars shipped out of these plants during this period been pre-cooled?

Mr. Dezell: Yes sir.

Mr. Call: That is, since——

Commissioner Prouty: Since the precooling began.

Mr. Dezell: Yes sir; since the pre-cooling began.

Mr. Durbrow: Can you tell us how many of the cars that have been pre-cooled and pre-iced at the shippers' plants and then moved forward with instructions not to re-ice in transit, have been diverted?

Mr. Dezell: No, I have no record of that.

Mr. Durbrow: You have no record of that at all?

Mr. Dezell: No sir.

Mr. Durbrow: I would like to direct your attention now to your exhibit No. 74.

45 Mr. Dezell: That is the Los Angeles statement, is it?

Mr. Durbrow: Yes sir; that is the cars pre-cooled at Los Angeles. You show here on your statement the final destination of these cars, and I would like to ask you if you could conveniently supplement this statement with a statement showing the number of times the cars shown on that statement were diverted.

Mr. Dezell: Yes sir; I can do that.

Mr. Durbrow: Now, if you can do that with reference to Los Angeles, you might be able to do it with reference to the cars that were pre-cooled and pre-iced by the shippers at these other three points.

Mr. Dezell: We have the record, but I meant to say that I have no tabulation of it.

Mr. Durbrow: But if it is enough to cover the work, I would appreciate it very much, and I think the Commission would like to have the information as to the number of those cars that were pre-cooled and pre-iced, that were diverted, if you could supplement those statements with that statement.

Mr. Matthews: You mean all the cars or all the decayed ones?

Mr. Durbrow: All the cars.

Commissioner Prouty: We ought to know in that connection, Mr. Durbrow, in a general way, whether these diversions were more or less frequent than on cars not pre-cooled.

46 Mr. Matthews: We will have some further testimony on that.

Mr. Durbrow: Yes, I think that is a very material thing to show. You might at the same time, in the way in which these records are kept, disclose the length of delay at each particular point where a car might be held for disposition, and that will give us some light on this situation. Now, I note that according to this exhibit No. 74, in which you have specified the dates upon which these cars moved, that the shipments practically ceased in the middle part of June. I would like to have you tell us, please, when the California Fruit Exchange discontinued the practice of pre-cooling and pre-icing cars and routing them through or sending them through with instructions not to re-ice in transit.

Mr. Dezell: This statement shows it includes all cars to and including July 6th. We could not go any further, because the records are not in, but there have been cars shipped since then.

Commissioner Prouty: I think, Mr. Durbrow, the practice has been continued during the season. I suggested that reports be sent to the Interstate Commerce Commission upon the arrival of each pre-cooled car at destination, and when I came through Washington the other day, which was the 30th of August, I noticed two or three reports on my desk of pre-cooled cars which had just arrived—so they must have been shipped out more or less during the entire season.

47 Mr. Dezell: There are some in the plant now.

Mr. Durbrow: We would like very much——

Commissioner Prouty: He ought to show—I have asked him the question once already—he ought to show in what months these pre-cooled shipments were made from the various pre-cooling plants—from Pomona, Highlands, and from Los Angeles—how many pre-cooled cars were shipped each month.

Mr. Dezell: I can do that.

Mr. Durbrow: And we ask in that connection, your Honor, to have the table show the date, not only the date of shipment but the date of arrival at any intermediate point where they were held, and the date of final arrival at destination.

Mr. Matthews: Won't the number of days en route give that?

Commissioner Prouty: I think if they would show the number

of days the shipment was en route, that that would answer your purpose.

Mr. Dezell: You asked for the decayed cars?

Mr. Durbrow: No sir; I would like to have it for all cars.

Commissioner Prouty: Mr. Durbrow, I have issued an order that all those reports which have been made to me, to the Interstate Commerce Commission, be sent here, and I suppose they are here somewhere as a part of this record, and if you will examine those reports you will see for yourself just what they show.

48 Mr. Matthews: That is the reason we have not made these tables more specific, your Honor, because those reports were in the possession of the Commission.

Mr. Call: I think that the record will probably show a less percentage of diversion from these two plants, Highlands and Pomona, especially East Highlands, than the average, because that is a very popular brand over there, and they have more orders than they can supply, and don't think they divert very many cars, and the cars come through in very fine condition.

Commissioner Prouty: I suggested that the report which the Commission received from this car at destination should show the date of shipment, the date when it was received at destination, and the ice in tanks when received at destination, the condition of the fruit, and also the temperature. Now, here is a report from Highlands, which shows when loaded, when received at Boston, that the tanks were one-third full, and that the condition was good. It does not apparently show the temperature. You can look at all these reports—they are here—not only from Highlands but from these other points. Proceed, now, Mr. Durbrow.

Mr. Durbrow: In this Exhibit 74 you show some cars that arrived in rather bad condition, and you spoke about one of the cars that was picked up. I didn't quite understand what you meant

49 by that.

Mr. Dezell: They were oranges that had dropped off on the ground, and they had picked them up and shipped them.

Mr. Durbrow: Is it customary to make that kind of shipment?

Mr. Dezell: Well, depending on the market. Ordinarily they are not worth much.

Mr. Durbrow: It is a fact, is it not, that shippers do ship cars of oranges which are not up to the standard very often, and dispose of them for whatever price they may receive.

Mr. Dezell: Yes, there is some inferior fruit.

Mr. Durbrow: Now, right in that connection, I would like to ask you if you can state in a general way how much ice was found in the bunkers of the cars that were pre-cooled and pre-iced by the shipper?

Mr. Dezell: Those records will all show that. It varies, and I could not approximate the average.

Commissioner Prouty: It runs all the way, Mr. Durbrow, from one-sixth to one-half full.

Mr. Durbrow: I thought that was about the figure, according to some tests that we had made. Now, Mr. Dezell, I have asked you

that question for the reason that I wanted to ask one further question, which I think has great materiality, and I would like as full an answer from you as is possible. I want to ask you if the
50 California Fruit Exchange have ever preferred any claims against any of the carriers for the reason and for the sole reason that cars shipped under that standard refrigeration were found to contain less than half a tank of ice en route up to destination.

Mr. Matthews: You mean pre-cooled cars?

Mr. Durbrow: No sir; cars moving under standard refrigeration.

Mr. Dezell: Yes, they have.

Mr. Durbrow: They have. What is the minimum amount of ice that you would base your claim on? I mean, the maximum amount of ice that you would base such a claim on?

Mr. Dezell: Well, it would depend upon what particular journey it was on.

Mr. Durbrow: Well, let us take a shipment to the Missouri River—the ice tanks were half full of ice at that point. Would the California Fruit Exchange have made a claim for deterioration of that shipment, basing their claim entirely upon the fact that there was insufficient refrigeration?

Mr. Dezell: I hardly think so. If it was at Needles and it was less than half full, or at Yuma or at Winslow, they might have done so.

Mr. Durbrow: Let us take a shipment destined to any point
51 east of the Missouri River. Has the California Fruit Exchange ever made a claim upon any of the carriers for damage and have they based their claim solely upon the fact that the tanks were only one quarter full of ice?

Mr. Dezell: East of the Missouri River?

Mr. Durbrow: Yes, east of the Missouri River.

Mr. Dezell: I do not know from my own knowledge whether they have or not.

Mr. Durbrow: What is the best information you can give us upon that point? What has been the basis of making such claim?

Mr. Dezell: I could not say. I don't file the claims.

Mr. Durbrow: Who is there, engaged in your Fruit Exchange that could give us that information?

Mr. Dezell: Why, our claim manager, Mr. Frazier, died recently, and Mr. Norton is now claim manager. He has not been with us very long.

Mr. Durbrow: Does Mr. Woodford know anything about that?

Mr. Call: Mr. Norton ought to know all about it; he has handled both sides of it.

Mr. Dezell: I don't think Mr. Woodford would know of his own knowledge about it.

Mr. Durbrow: Now, referring to your statement No. 76, please; I notice that you have included the months of June and
52 July, 1910. I understand you have pre-cooled and pre-iced shipments and sent them through to destination without re-icing in transit during both of those months. You show in this

table that there were 284 cars shipped during those months which were below three per cent.

Mr. Dezell: Over.

Mr. Durbrow: Over three per cent decay?

Mr. Dezell: Yes sir.

Mr. Durbrow: Now, could you specify likewise the routes, whether they were diverted, whether inspected en route, and along which lines the cars moved?

Mr. Dezell: Of the 5000 cars?

Mr. Durbrow: No sir; of the 284 cars. You show 284 cars which moved under standard refrigeration and arrived at destination with decay exceeding three per cent. Now, I would like to have you, if you can, take those 284 cars and show the lines over which they were routed, whether they were held for disposition at any point en route, whether they were diverted, and the length of time they were in transit, and the number of times they were diverted?

Mr. Dezell: Yes sir; I can give that.

Mr. Durbrow: And whether there were any of those picked up fruit. And I will appreciate it very much if you will sup-
53 plement that statement in order that we may determine accurately just what the conditions were. You will furnish that statement, will you, please?

Mr. Dezell: Yes sir.

Mr. Durbrow: I understand that your tests show that, as far as the cars handled by the Pacific Fruit Express Company are concerned, that they saved one ton of ice, so far as ice in transit is concerned, where the cars had been pre-cooled, as contradistinguished from where the cars went through under standard refrigeration without pre-cooling.

Mr. Dezell: Yes sir.

Mr. Durbrow: And the Santa Fe saved a ton and a half?

Mr. Dezell: Approximately.

Mr. Durbrow: You have spoken about pre-cooling at Highlands, your have spoken about pre-cooling at Los Angeles, you have spoken about pre-cooling at Pomona. Do they pre-cool at those points or do they put the fruit in cold storage?

Commissioner Prouty: That has all been gone into, Mr. Durbrow.

Mr. Durbrow: I desire to ask this one question.

Mr. Dezell: Pre-cooling, as I take it, means taking it——

Commissioner Prouty: The Commissioner has been there and seen exactly how it is done at different places—exactly how it
54 is done at each point.

Mr. Durbrow: I asked the question for this purpose: The witness stated they had withdrawn the privilege of storing in transit at Los Angeles. I will confine my question, if your Honor desires me to do so, to the Los Angeles plant, and ask this witness whether they pre-cool at that point or whether they merely store in transit, in view of the fact that that privilege has been withdrawn.

Commissioner Prouty: Well, they pre-cool, but under their method of pre-cooling they must store in transit.

Mr. Durbrow: Well, they must store in transit at Los Angeles,

but not at their plant, because, as you recall, the fruit moved right from the plant.

Commissioner Prouty: No, I understand him to say that the practice had been withdrawn or would be withdrawn at Los Angeles.

Mr. Dezell: And also by looking at these statements you will see that the cars which were pre-cooled at Los Angeles did not go through in as good shape as the cars pre-cooled at Pomona and Highlands.

Commissioner Prouty: And the question was whether the shippers would care to pre-cool, under the conditions existing at Los Angeles, and he said that could not be done, whether they wanted to or not.

Mr. Durbrow: I would like to have the record show, if
55 your Honor thinks proper, whether they have any pre-cooling here at Los Angeles or whether the fruit is placed in cold storage.

Mr. Dezell: Well, the fruit is pre-cooled before it is shipped. It is done by unloading it in a cold room cooling it down.

Commissioner Prouty: That already appears in the case, Mr. Durbrow.

Mr. Durbrow: I would like to ask one other question. I understood you to testify that the buyers at eastern points preferred shipments that had been pre-cooled.

Mr. Dezell: We have had advices from some of our agents to that effect.

Mr. Durbrow: That is all.

Commissioner Prouty: That is all, Mr. Dezell.

Cross-examination on behalf of Atchison, Topeka & Santa Fe Railway Company:

Mr. Camp: One moment. Your cost of pre-cooling was about five cents per box?

Mr. Dezell: Yes.

56 Mr. Camp: About 400 boxes in a car.

Mr. Dezell: 448 to 462.

Mr. Camp: And your initial icing cost about $15?

Mr. Dezell: About that.

Mr. Camp: And your tariff charge on pre-cooled fruit was $30 above the transportation charges.

Mr. Dezell: Yes, sir.

Mr. Camp: In shipments to New York your pre-cooling and pre-icing, with the additional $30 charge, was just a trifle less than standard refrigeration, wasn't it?

Mr. Dezell: We had to pay $5 switching in addition to that.

Mr. Camp: You had to pay $5 switching to get it into storage and out?

Mr. Dezell: Yes, sir.

Mr. Camp: How about your pre-cooling at your own plant, at your own houses?

Mr. Dezell: Those houses belong to the association. I am not in touch with them.

Mr. Camp: You don't know what it did cost?

Mr. Dezell: No, sir; I do not. I could not say much about those outside plants, plants in the country.

Mr. Camp: Are you going to give us a table showing the
57 number of cars pre-cooled and pre-iced by the shippers in July?

Commissioner Prouty: You can show that for every month?

Mr. Dezell: Yes.

Mr. Camp: In July, and each month?

Mr. Dezell: Yes.

Mr. Camp: Your statement for July will show a very much smaller number of cars pre-cooled and pre-iced, won't it, than in April?

Mr. Dezell: Yes, sir.

Mr. Camp: Why was it that you made a smaller number of shipments in that way in July?

Mr. Dezell: Well, there was a smaller amount of fruit moving in July. It is about all taken up to fill their orders then. They don't care to hold it over.

Mr. Camp: You don't care to undergo the delay?

Mr. Call: We don't have the fruit.

Mr. Camp: I understand. Do you know whether or not there were any cars shipped in July?

Mr. Dazell: Yes, but a very small number compared with what we have in April.

Mr. Camp: Do you undertake to say that the proportion of cars shipped, pre-cooled and pre-iced, in July was equal to the proportion of cars shipped pre-cooled and pre-iced in April?

58 Mr. Dezell: I could not say without figuring that.

Mr. Camp: Then your explanation of the decrease in number is solely the less quantity of fruit shipped?

Mr. Dezell: Yes, sir.

Mr. Camp: The decrease in number of pre-iced and pre-cooled cars?

Mr. Dazell: Yes.

Mr. Call: That, I suppose, applies to navels?

Mr. Dezell: Yes.

Mr. Camp: You have no present facilities for pre-cooling and pre-icing all your cars?

Mr. Dezell: No, not all we ship.

Mr. Camp: Or nearly all that you would ship under refrigeration?

Mr. Dezell: No.

Mr. Camp: Then your idea is that the carriers must continue to furnish some facilities in the way of either standard refrigeration or pre-cooling or both?

Mr. Dezell: Well, the facilities would be increased if pre-cooling by the shipper was encouraged.

Mr. Camp: You think the Exchange would take care of all of it.

59 Mr. Dezell: Under present conditions, I think they would.

Mr. Camp: And the carrier could go out of the refrigeration business entirely, as far as citrus fruits are concerned?

Mr. Dezell: Well, perhaps he would meet the competition.

Mr. Camp: Well, could the carrier perform refrigeration service on one-half of the shipment as cheaply per car as on all?

Mr. Dezell: Well, I don't know whether they could or not. I should not think so.

Mr. Camp: I think that is all.

Mr. Durbrow: I would like to ask one further question, with your Honor's permission, in view of the question asked by Mr. Camp. How many tons of ice, on an average, do you load into the bunkers of the cars that have been pre-cooled and pre-iced at the shippers' plant?

Commissioner Prouty: No, that all appears in the original case.

Mr. Durbrow: I am speaking of these tests, your Honor. I want to know since these tests have been made, how many tons of ice they have loaded into the cars, and I think when we show that you will find they are loading a greater percentage of ice. I want to develop that fact.

Commissioner Prouty: They testified on the former hear-

60 ing that they packed the bunkers full, and that they put in about a ton more of ice than you gentlemen did when you iced the car. That was the testimony as to Highlands and Pomona before, that they placed nearly a ton more of ice in the car than the railroads did.

Mr. Call: That is what he did last year. This year being a more favorable season, some of them were only loaded to half their capacity. This year was a better year, and they did not need so much ice.

Commissioner Prouty: Now, Mr. Durbrow, this is a typical report, and this is one of the reports I found on my desk. It is dated Pittsburg, August 31, 1910. Car No. 3006. Origin, Pomona, Cal. Destination, Pittsburg, Pa. Date and time arrived, Aug. 30, 1910; 3:30 P. M. The seal record shows broken on both doors and hatches. Amount of ice in tank, one-fourth. Condition of contents, good—sound. Temperature inside car, 60. Temperature outside, 73. Did car show signs of being re-iced in transit? No. Price realized, not sold. That is signed by W. S. Griffiths, C. R. Myrick, Griffiths being the Fruit Express inspector and Myrick the shipper's inspector. Now, that was the kind of report I suggested be sent to the Commission in the case of every shipment, but we do not mean to have exactly that kind of a report in the case of all shipments.

61 Mr. Durbrow: May I ask if any of those reports show what weight of ice was put in the cars at the point of origin?

Commissioner Prouty: No, sir, the understanding is that the bunkers were filled.

Mr. Camp: I will ask one more question. Why did you not take

the amount of ice put in the bunkers east of Argentine on the Santa Fe?

Commissioner Prouty: Because they were instructed not to. At least, that would be one reason. The inspection or the experiment made by the Commission was to extend from San Bernardino to Argentine. It did not seem profitable to go into that matter east of Argentine, because the cars are divided up there, and go, some one way and some another, and we felt that if we could get the figures up to Argentine we would know substantially the facts.

Mr. Camp: That is the amount of ice up to Argentine?

Commissioner Prouty: I understand that the car is iced at Argentine and goes to Chicago. There is some statement here kept by the company, by the Fruit Exchange, showing the amount of ice put into the cars at Corwith or Chicago on your lines, about a thousand pounds to the car, as I remember it. But the great bulk of the ice is used at Argentine and west. The figures which
62 you introduced show the amount of ice used up to Argentine as well as the amount of ice used through to Chicago.

Mr. Call: Mr. Dezell, do you know of any action having been taken by the Exchange, or any of its affiliated associations, looking to the starting of further pre-cooling plants?

Mr. Dezell: I know of several of them that are building houses and arranging to give space for pre-cooling plants.

Mr. Call: But that whole question is postponed, as to what would be the best thing to do.

Mr. Dezell: Yes, sir.

Mr. Call: There has been no action taken looking towards the location of new plants, as far as you know?

Mr. Dezell: No, sir.

Mr. Call: Your idea about what might be done is simply your individual opinion as to the probabilities in the future, depending wholly upon rates and conditions?

Mr. Dezell: Yes, sir.

Mr. Durbrow: If your Honor please, I would like to say at this time what I said at the former hearing, that these shippers should be advised that they should not spend any money in constructing any more pre-cooling plants, for the simple reason that there is a great question as to whether they may not withdraw that privilege.

Commissioner Prouty: The shippers should be advised, and were advised by the Commission upon the former hearing, and are again advised now, that they had better not construct any addi-
63 tional pre-cooling plants until they find out first what the opinion of the Commission is, and next what the opinion of the court is upon the Commission's opinion, if any question is made about it.

Mr. Call: That was our idea. This Upland plant was contracted for before the former hearing and was in process of construction, and was started after the tariff was issued fixing the rate for pre-cooling. There has none been started since, and no action taken towards constructing any, and it is all problematical as to what might be done.

Mr. Matthews: Clinton and Waterloo, Iowa, are the last icing stations between the west and Chicago, are they not?

Mr. Dezell: Yes, sir.

Mr. Matthews: Explain what you mean by cars not initially iced at San Bernardino or Colton. What cars do those include?

Mr. Dezell: It would be cars that were iced empty and sent to the loading stations under ice. When they came back they would be re-iced there.

Mr. Matthews: There are no cars shipped in the month of June or July, are there?

Mr. Dezell: Very few.

Mr. Matthews: The crop is moved by May, ordinarily?

64 Mr. Dezell: Well, by the first of June they expect to get the great bulk of them out.

Mr. Matthews: Valencias move in those months, do they not, summer oranges.

Mr. Dezell: Yes, sir.

Mr. Matthews: Do those carry better or worse than the Navels.

Mr. Dezell: They are a better carrying fruit.

Mr. Matthews: I think that is all.

Commissioner Prouty: That is all, Mr. Dezell.

Mr. Matthews: It is considered that all those documents are offered in evidence, your Honor.

Commissioner Prouty: It is understood they are offered.

65 J. S. EDWARDS, recalled, testified as follows:

Commissioner Prouty: Has this witness been sworn in this case?

Mr. Matthews: He testified before. Your record of pre-cooled shipments from the Highlands Plant shows no decay.

Mr. Edwards: No decay reports.

Mr. Matthews: Those shipments were made to what points—all over the country generally?

Mr. Edwards: Generally all over the country, throughout the east and northeast.

Mr. Matthews: How much ice did you put in the bunkers of those cars?

Mr. Edwards: You mean, the average?

Mr. Matthews: What was your practice?

Mr. Edwards: Usually to fill the bunkers clear full, about six tons to the car.

Mr. Matthews: In other cars did you put in less than six tons?

Mr. Edwards: Sometimes as low as half that amount.

Commissioner Prouty: I think before, Mr. Edwards, you testified that you manufactured a cake of a special size, and

66 took special pains to fill the bunkers full, and that you succeeded in getting into the bunkers about a ton more of ice than was used by the railroad companies.

Mr. Edwards: That was my testimony.

Mr. Matthews: Explain in what cases you have saved money by putting in less ice.

Mr. Edwards: Well, part of the season we wanted to experiment

a little. We had demonstrated to our satisfaction that we could ship fruit cooled to approximately 33 to 35 temperature by filling the bunkers completely with ice, that we could successfully
67 ship and divert those all over the east; and we thought we would experiment a little and see if we could do it with less ice. In some cases we put as low as three tons of ice in the cars, and still they arrived at destination in prime condition, and with—I believe the lowest was estimated at 200 pounds of ice.

Commissioner Prouty: Did you give the temperature of the inside of the car in those cases?

Mr. Edwards: We do not, and we do not regard that as of any consequence, because as quick as you open the car to take the temperature of the air inside, there is a rush of outside air into the car, and you are getting nothing. If you could get the temperature of the fruit in the car it would be worth something, but to take the temperature of the air that rushes in from the outside of the car all around, we have never regarded that as of any consequence.

Commissioner Prouty: As I understood your testimony before, if fruit is properly packed, if it is not injured in packing, it will carry without much danger of decay, and refrigeration is intended mainly to preserve the appearance of the fruit. Is that so?

Mr. Edwards: Well, that is partly true. Theoretically, and with ideal conditions, you might say that if you take an orange, no
68 matter how ripe, and absolutely get it into the car without any mechanical injury, then, according to the government reports of investigations, there should be no decay, because there is no place for the spores to get to work on it. But practically that is impossible; there is more or less mechanical injury in spite of everything we can do, especially when the fruit is over-ripe, so that practically it will always be important to keep the fruit cool so that the heat and moisture do not get in their work and produce decay.

Mr. Matthews: Will you explain to the Commission in that connection just what the difference is between a weak and strong orange crop?

Mr. Edwards: Every season there is some period when the fruit appears to be weaker than others. Usually we think it is about the blossoming period. It seems to be disposed to puff or fall off, and at that time we expect to have to exercise greater care in handling it. Again, some orchards, for reasons that we do not know, are weaker than others. And again, some whole seasons the fruit appears to be very weak throughout the season, and puffs badly—over-ripe from the start.

Mr. Matthews: How is it this year as to carrying?

Mr. Edwards: This year I believe is the finest fruit on record, take it for the season through.

Mr. Matthews: Is there more or less loss when the entire
69 crop is weak?

Mr. Edwards: Oh yes. One year—I don't remember just when—six or seven years ago, as early as March the fruit developed such extreme weakness, falling on the ground and puffing, that every grower in the country was anxious to get his fruit in before it

was all lost. Of course this rush of fruit into the houses caused a shortage of cars, and accumulation of fruit in the packing houses, the result was that we had to keep it for cars. The temperature was high in the country and the fruit was rotting on the ground and in the houses. In some cases we asked for cars, and not being able to get the cars to load, we were obliged to repack them and sell them for what we could get or dump them out in the wash. That was the worst year on record, but we have had other years when similar conditions have prevailed.

Mr. Matthews: What advantage has your pre-cooling system in a case of that kind over the regular refrigerated method of shipments, with respect to saving the crop?

Mr. Edwards: You understand that not only heat and moisture are necessary to induce decay, but also a lot of time; so if we can eliminate the time in which the heat and moisture get in their work, why then we preserve the fruit. So with our pre-cooling
70 plants right in the orchard, or by the orchard, we pick the fruit, and if it is picked and put immediately under refrigeration up to the extent of our capacity in our houses, we can hold it until we get the cars.

Mr. Matthews: You shipped about four hundred cars last year, did you not?

Mr. Edwards: Approximately.

Mr. Matthews: And pre-cooled out of that one hundred and twenty-six?

Mr. Edwards: One hundred and twenty-six.

Mr. Matthews: What is your estimate of your shipments this year?

Mr. Edwards: One hundred and twenty-six pre-cooled at our plant. Why, the general estimate every year, about fifty per cent higher than last year, and we think ours will perhaps reach that; in another words, six hundred cars for our house.

Mr. Matthews: Pre-cooled about how many, ordinarily, of those?

Mr. Edwards: Some years more than others; average a little less than half.

Mr. Matthews: The estimated crop is about fifty thousands cars next year, isn't it?

Mr. Edwards: I think so.

Mr. Matthews: You have paid $30 on all these cars?

71 Mr. Edwards: This last season.

Mr. Matthews: What is your experience, as to whether you can pay that and save any money over the regular refrigeration charge?

Mr. Edwards: It is about a matter of breaking even. At Chicago it would be pretty near an even break, while in New York it would be a little to the good for us.

Commissioner Prouty: What is the charge to Chicago?

Mr. Matthews: $62.50. So you cannot avail yourself of the pre-cooling facilities without losing money to points west of Chicago?

Mr. Edwards: No sir. Having a plant installed, however, we might continue to use it. But of course we would not build a plant

expecting to compete with regular refrigeration paying $30 arbitrary.

Mr. Matthews: Have you received any letters or advices from your customers concerning the cars that they preferred—precooled cars?

Mr. Edwards: Yes, we have occasionally received very commendatory letters.

Mr. Matthews: Do you think pre-cooling has helped prices?

Mr. Edwards: Oh, undoubtedly it has.

72 Mr. Matthews: So you still think that refrigeration is essential to the preservation of the fruit, but ordinarily it is only necessary to preserve its appearance?

Mr. Edwards: I have testified that even when the fruit is comparatively strong, as you call it, it is impossible to entirely eliminate mechanical injury, practically impossible, so that I think refrigeration as insurance would be a good thing, even outside of the appearance.

Mr. Matthews: Have you shipped any fruit this year pre-cooled and not pre-iced?

Mr. Edwards: No.

Mr. Matthews: Do you consider that practicable—if so, to what extent?

Mr. Edwards: There is a period early in the season sometimes when it might be practical; that is, take it, for instance, when it is very warm here in March and cold over east. By pre-cooling the fruit we can then ship it out of this hot country, and after it gets over the mountains it does not need any further refrigeration. That would be practical. But when the weather is warm in the east it would not be advisable at all.

Mr. Matthews: Do you think the pre-cooling and pre-icing service can be separated, or must the pre-icing be done at the same

73 time?

Commissioner Prouty: He has already testified as to that, but he may answer that one question, without going into those details again.

Mr. Edwards: Why, of course it is far better to have the ice in immediately, because you necessarily lose refrigeration between the time that the car is cooled and the time it is iced.

Commissioner Prouty: If the shipper is allowed to do the precooling, and the shipment is only to be initially iced, I do not see any reason why it should not be iced at the time it is cooled. The question is whether the railroad should be allowed to extend to the shipper this form of refrigeration, or whether they shall insist upon doing all the refrigeration themselves. Do the oranges that come into your plant show a fair average class of oranges?

Mr. Edwards: Oh, no; they are very superior.

Commissioner Prouty: You do not pack merely your own oranges—you pack a good many other oranges?

Mr. Edwards: My own individual oranges, no. We are an association.

Commissioner Prouty: Do you pack nearly all the oranges that are grown in that section?

Mr. Edwards: We have got the bulk of them; unfortunately not got all of them.

74 Commissioner Prouty: What I am trying to get at is this: If you pack a very superior kind, and take care in packing your oranges, your oragnes might go through to destination under the pre-cooling system, whereas a poorer orange, not as well packed, would require icing at frequent intervals in transit. Now, isn't that correct?

Mr. Edwards: That is partly true and partly not. While we think we have a very superior orange, it is not the best keeping orange. The best keeping orange is an orange that is produced, like up there in the north, under adverse conditions, where they say they produce good men up there because it is so hard to produce them.

Commissioner Prouty: They have to be good men in order to exist there?

Mr. Edwards: Yes, that is the idea. An orange that comes through hardships is one that will resist hardships. But we produce an orange in that country under favorable conditions as to producing a fine quality, but not a good keeping orange, as a rule, and of course anything that we can introduce in the way of care in handling helps us.

Commissioner Prouty: What time do you close your packing plant?

75 Mr. Edwards: Usually we get through with everything about the first of July. Sometimes we have a few later, but we have very few Valencias.

Commissioner Prouty: Did you send all your fruit east which went east under this pre-cooling system, or did you send some of them under refrigeration?

Mr. Edwards: After the first of April everything that went was sent under pre-cooling.

Commissioner Prouty: None of your fruit was iced in transit this year?

Mr. Edwards: We only had two cars, I think, that went after the first of July.

Commissioner Prouty: What was the destination of those cars—do you remember?

Mr. Edwards: I do not remember.

Commissioner Prouty: This car of which I read you the report, Mr. Durbrow, was from the Pomona plant, and was sent to Pittsburg.

Mr. Durbrow: What month was that?

Commissioner Prouty: That was shipped from Pomona to Pittsburg, and arrived at Pittsburg on the 30th of August.

Mr. Edwards: I am not sure. I can find out, but I think that that car I referred to as having been shipped about the first 76 of July went to Spokane, and somewhere up in that country.

Commissioner Prouty: Is it your opinion, Mr. Edwards, that it

would be safe for the orange growers of California to rely entirely on the pre-cooling system in the transportation of their fruit east?

Mr. Edwards: If they could be assured——

Commissioner Prouty: I am talking about actual conditions, actual shippers and the handling of the fruit as it must be handled. Do you think it would be safe to rely on pre-cooling alone, or would you find it necessary as you find it here in California to ice your shipments through?

Mr. Edwards: Well, we must be permitted to put the initial ice in.

Commissioner Prouty: I understand that, but suppose you have a right to pre-cool your oranges and initially ice the car; is it necessary to ice that car afterwards? Could you safely undertake to handle all the oranges of California by that system?

Mr. Edwards: Our experiments so far would seem to prove it; but of course we have to depend on people who are not always faithful,

77 as we think, to their duty for this service, and I do not know whether it would be entirely safe to abandon all icing stations east of——

Commissioner Prouty: Suppose the Commission were of the opinion that the fact that you can load more boxes of oranges into a car, as I understand you, on account of the pre-cooling would fairly entitle you to use that car in that manner without the payment of an extra charge; suppose we came to the conclusion that you had a right to pre-ice and pre-cool without any charge whatever, or upon some much smaller charge; what effect would that have upon the movement of oranges in California—would they go pre-cooled or would they still be iced in transit?

Mr. Edwards: They would be pre-cooled, if the present exorbitant ice charge was maintained.

Commissioner Prouty: Well, we will assume for the present that the charge is not exorbitant, and that it will be maintained, would you say, if the charge is maintained, that the oranges would be pre-cooled?

Mr. Edwards: Without question.

Commissioner Prouty: Because, first, as you figure it, it would cost you about $30 a car to pre-cool as against $60, wouldn't it?

Mr. Edwards: That is, approximately.

78 Mr. Matthews: The carriers claimed at the last hearing that it was necessary to inspect the drain pipes. Will you explain what you think about that?

Commissioner Prouty: Well, Mr. Durbrow, the real question is whether you can send these cars through. Something might happen, undoubtedly, but I understand this witness to say that he has shipped his cars this last year and wants to continue doing that—isn't that enough?

Mr. Call: I think I ought to say in connection with that, that I do not think the witness should speak for the industry in saying that they will all be pre-cooled. I do not think his opinion is right there.

Commissioner Prouty: I simply asked him what his opinion was.

Mr. Matthews: What would you say as to the necessity for any

inspection of these drain pipes, where the cars are pre-cooled? Is there any necessity for the inspection of those drain pipes on these pre-cooled cars?

Mr. Edwards: I don't think so. Of course where the ice is put in along the route, storage ice, it takes in sawdust unless they are very particular in washing the sawdust off and brushing the sawdust off, and it might get in and clog the drain pipes. But as we use manufactured ice, I cannot conceive of any reason why the
79 drain pipes need inspection, as we inspect them when the cars are loaded.

Mr. Matthews: You do not care to have them inspected, as far as you are concerned?

Mr. Edwards: We do not.

Mr. Matthews: Do you load all of your pre-cooled cars seven tiers wide?

Mr. Edwards: I think there were two, by some inadvertence, that were not loaded seven tiers wide.

Mr. Matthews: What do you say as to what percentage of your pre-cooled shipments were diverted.

Mr. Edwards: Well, ordinarily for our fruit, we always try to avoid diversions, and we have regular customers that we ship to, and very small occasion to divert. I think about one in ten of our cars this year have been diverted, of these pre-cooled cars.

Mr. Matthews: What do you say as to the conditions at Los Angeles, as to how they compare with the conditions at your plant, as to whether that service can be properly performed there?

Commissioner Prouty: We went into all of that before. I don't think we will take up time again.

Mr. Matthews: That is all.

80 Mr. Camp: I don't know whether at the former hearing we went into details as to how he gets at the cost of refrigeration to him, or not.

Commissioner Prouty: I don't remember whether he did or not. It appeared in one case that they bought their ice or refrigeration from some company. Is that your case?

Mr. Edwards: No sir; we manufacture our own ice.

Commissioner Prouty: At Pomona they buy it from some company, I think. But the testimony showed before that they knew the expense, and I believe Mr. Edwards stated the approximate expense at Highlands, and that expense, if I remember right, was something like $30 a car.

Mr. Edwards: Approximately.

Mr. Camp: That is the manufacturing part. Does that include interest on plant?

Mr. Edwards: Yes.

Mr. Camp: At what per cent?

Commissioner Prouty: You will find that, Mr. Camp, in the former record.

Mr. Durbrow: I would like to ask one question. Keeping in mind that you are assuming the actual conditions as they obtain today, having particular reference to the fact that the evidence discloses

that a great percentage of cars are diverted in transit, that
81 they are held en route for disposition, and that that results in a great delay in the final delivery of a car to its ultimate destination; taking into consideration the fact that the shipments move in the hot months of the summer to these points, where the temperature is high, and all the facts which have been testified to and developed in this case—and you have heard the testimony—I want you to tell me whether the shippers of citrus fruits in Southern California are willing that the Southern Pacific Company and the other carriers may entirely dispense with their present icing plants at points en route, and that they may entirely discontinue them by reason of the fact that you are prepared, so far as your shipments are concerned, and of course the same rule would apply to the others, to so treat the shipments at the point of origin that they may be moved through to destination, under any situation or any condition that may arise, without the necessity of icing in transit?

Mr. Edwards: That is a pretty long question, and I am not sure whether I understand it.

Commissioner Prouty: I think he has answered that question. I understood Mr. Edwards to say that as far as he was concerned he would. But I understand Mr. Call to say, as representing the shippers of Southern California, that he would not, and I think
82 you have a right to rely on Mr. Call's statement or opinion that you must continue your refrigeration service in some way.

Mr. Durbrow: The purpose of that question, your Honor, was this: Here is a man who has gone on the stand and testified as to the success of this icing by the shippers at the point of origin. Now, I want to ask him if in his opinion the icing at points en route could be dispensed with?

Commissioner Prouty: He says as to his shipments, yes.

Mr. Durbrow: If that is his unqualified answer.

Commissioner Prouty: That is his unqualified answer as far as he is concerned, that he did not care anything about the reicing at any of these plants—is that your idea?

Mr. Edwards: That is my idea personally.

Mr. Durbrow: You testify that it is not necessary for the carriers to have anything to do with these shipments after they leave your plant, except to transport them in ordinary course?

Mr. Edwards: All we ask them to do to them is to leave them alone.

Mr. Durbrow: Now, will you so far as shipments originating at your plant are concerned, enter into a contract to indemnify the carriers and save them harmless for any injury, assuming that those shipments did not get any inspection until they reached their final destinations?

83 Mr. Edwards: I would act under the advice of a lawyer, as far as I understand.

Commissioner Prouty: He certainly should.

Mr. Durbrow: That is a case where the opinion and advice of counsel would certainly be badly needed, your Honor.

Commissioner Prouty: I am very sure, Mr. Durbrow, that the commission would not ask you to extend to him that privilege unless you did it upon condition that you were not to be held liable if that fruit was injured by reason of not being iced, in case it was taken through by your company on schedule time.

Mr. Edwards: That is all right. That is it exactly.

Commissioner Prouty: The trouble, as I see it, arises here. There are cases where you can not get that fruit through on schedule time, and, query, in that case, shouldn't you have the right to preserve it by re-icing it? That presents the difficulty to my mind.

Mr. Call: The same as they do for ventilated fruit.

Mr. Durbrow: Of course, as your Honor has suggested, the carriers must take into consideration the fact that delays are bound to occur, no matter how efficient the operation of a road may be, and that we have a right to take into consideration.

84 Mr. Matthews: Ordinary delays would not hurt you, would they, Mr. Edwards?

Mr. Edwards: Oh no—a day or so would not cut any figure; but of course these unusual delays would.

Commissioner Prouty: That is all, Mr. Edwards.

85 P. J. DREHER, recalled as a witness, testified as follows:

Mr. Matthews: You shipped 207 cars, according to your statement?

Mr. Dreher: I think that is the record from the Pomona plant.

Mr. Matthews: How did you ice those cars—to what capacity?

Mr. Dreher: I think most of them were iced to their full capacity, though I could not say definitely about that.

Mr. Matthews: All loaded seven tiers wide?

Mr. Dreher: All loaded seven tiers wide, yes sir.

Mr. Matthews: What do you say, after your experience now, as to the practicability and desirability of pre-cooling for your plant?

Mr. Dreher: I think it is the proper thing and that we should continue it.

Mr. Matthews: Are you satisfied with the results of the year's work?

Mr. Dreher: Yes sir.

Mr. Matthews: Did you hear Mr. Edwards' testimony as to weak and strong crops?

86 Mr. Dreher: Yes sir.

Mr. Matthews: Do you agree with that?

Mr. Dreher: I do.

Mr. Matthews: You think a pre-cooling plant is of value, especially in the case of a weak crop?

Mr. Dreher: Yes. I have known cases the middle of February when it was so weak that it ought to have been precooled, and if it had been pre-cooled it would have been of great benefit.

Mr. Matthews: To what extent are your cars diverted?

Mr. Dreher: Why, in the usual manner. We make no difference between them, but treat them just the same as you would any other shipment.

Mr. Matthews: To what part of the country do you ship the most of your fruit?

Mr. Dreher: Most of our fruit has gone into Fort Worth, Oklahoma, Cincinnati, Pittsburg, and that warmer country.

Mr. Matthews: You have the average amount of diversion, you think?

Mr. Dreher: We have—yes sir.

Mr. Matthews: You placed a thermograph, or had some one place it for you, in some of the cars which were pre-cooled?

87 Mr. Dreher: Yes sir; the representative of the Pacific Fruit Express placed a thermograph in a box of fruit, he put the thermograph in two boxes, two of them in our packing-houses, in our pre-cooling rooms, and after the fruit was ready for shipment it was replaced by fresh dials in the pre-cooling room, and packed in there and loaded into the car, and I forget where the car went, but it was some point—you have the record there.

Mr. Matthews: What does that record show, as to destination?

Mr. Dreher: This shipment shows, the shipment contained two thermographs. The thermograph was used, two thermographs, they were placed, and it shows 63 cars at 3 P. M. on Wednesday the 4th; 40 cars at 12 M., on the 5th, 37 cars at 12 M., on the 6th, 35 cars at 12 M., on the 7th, and 33 cars at 12 M., on the 8th. This was fruit while in the pre-cooling room. It was brought down from 63 to 33. A new dial was put in on May the 11th at 8 A. M., and after the dial was put in the reading was at 35. The car arrived on May 20th at 12 P. M., and the dial read 45, showing an increase of temperature in the car during the ten days of ten degrees.

Commissioner Prouty: At what point was that car received?

Mr. Dreher: I don't believe it is stated in here where the car went.

88 Commissioner Prouty: Have you stated the date of shipment?

Mr. Dreher: The date of shipment was May 11th.

Mr. Matthews: Columbus, Ohio.

Mr. Dreher: Columbus, Ohio—all right.

Mr. Matthews: What do you say as — the value of taking temperatures of the car at final destination?

Mr. Dreher: It has no value whatever. The temperature of the car will fluctuate. In loading our fruit seven boxes wide and two tiers high that makes a solid mass of refrigerated matter, and the air in the car might change and fluctuate readily, but the body of the fruit won't. I do not think the temperature of the car is any criterion or of any value whatever; it is the condition and the temperature of the fruit that would be the value.

Mr. Matthews: What do you say, from your experience, as to your ability to pay $30 and save any money over the regular refrigeration charge?

Mr. Dreher: We can not save any money on the $30 rate. On

territory this side of the Mississippi River we are at a loss. We think, however, that pre-cooled fruit gives the fruit a fresher and better appearance, and it is generally considered as preferred by the trade over fruit ordinarily refrigerated.

Mr. Matthews: I think that is all.

89 Cross-examination:

Mr. Durbrow: Mr. Dreher, with your Honor's permission I want to ask this question as preliminary to a further question, in order that we may fix the time in this witness's mind. How long does it require you to bring your fruit to the temperature at which you ship it?

Mr. Dreher: From thirty-six to sixty hours.

Mr. Durbrow: Yes. Do you know how long it requires to bring fruit to that temperature when it is loaded into a car and iced and kept iced as it moves forward to its destination?

Mr. Dreher: Nothing more than what I have seen from Mr. Powell's records, which are published, which you have.

Mr. Durbrow: What was that, Mr. Dreher?

Mr. Dreher: I think it takes about three or four days. But in no case has Mr. Powell under refrigeration been able to bring fruit down to 33 or 35, or even 40, as I remember it.

Mr. Durbrow: What advantages do you claim for your plant over the old method?

Commissioner Prouty: That is all in the record already. We won't go into that again. It was very fully stated upon the former hearing what they claimed for this system of pre-cooling as compared with your system.

90 Mr. Durbrow: I am not able to remember it.

Commissioner Prouty: Ask him, as compared with icing.

Mr. Durbrow: In looking over the record I seem to find that question had not been asked, and I would like to have that answer in the record, with your Honor's permission, and to have this gentleman testify as to what he claims the advantages of the pre-cooling method are, where it requires this time, as compared with the old method of icing.

Commissioner Prouty: I am sure that is in the record. He went on to state how the orange was brought from the tree to his factory, and was put directly into the pre-cooling room, into the cold storage room, and was immediately reduced to this low temperature, and kept at that low temperature. Didn't you testify to that, Mr. Dreher?

Mr. Dreher: I did, your Honor.

Mr. Durbrow: Yes, but he did not compare it as put into the box car, and I wanted to see if there was any difference, your Honor.

Commissioner Prouty: You may answer that question.

Mr. Dreher: The fruit, as soon as it is packed, in our system, goes by gravity into the pre-cooling room, which room when we are operating has a temperature of from 35, possibly, to 38. Each box, as fast as it is unloaded, goes down, and the fruit immediately

91 comes under refrigeration, and as soon as the room is full we put on the forced draft and bring it down gradually.

Mr. Call: That does not answer the question. He asked what the advantage was.

Mr. Dreher: Now, the fruit, if it is not so handled, is kept in our house until we load it through the day, and goes into a warm car, and possibly the fruit is all warm.

Commissioner Prouty: Possibly it stays in your house three or four days?

Mr. Dreher: It may have set there. Sometimes it stays a week because we could not get the cars. The fruit is then taken to some other point, and it is twenty-four to forty-eight hours later before they could bring ice into the car than we do ourselves, and according to Mr. Powell's test it takes three or four days' additional time again to cool it down; but they never can cool it down as low as we do.

Mr. Call: He asked you what the advantage of your system was.

Mr. Dreher: It preserves the fruit and keeps it in its best and freshest condition. The disadvantage of the other system is loading it into the car, and that the fruit gradually goes down——

92 Commissioner Prouty: The real question is, in what condition does his fruit arrive at destination? Now, Mr. Dreher says that the customers rather prefer the pre-cooled fruit, but it seems to me the testimony shows there is not very much difference between the conditions in which the fruit arrives.

Mr. Dreher: Not for sale, but the fruit being put under refrigeration by the machine is fresher looking, firmer and better quality, and looks better.

Mr. Durbrow: The sooner the fruit is brought to a low temperature the better?

Mr. Dreher: No, sir; I don't mean to say that you could put zero on it—that is not what I said. The sooner you bring it down safely to a low temperature, the better.

Commissioner Prouty: Suppose you had a right to pre-cool without the payment of any pre-cooling charge, or with the payment of a pre-cooling charge one-third or one-quarter of what you pay now, what effect would that have on the manner in which oranges were shipped from California east—would they go mostly pre-cooled, or would they still go under ice?

Mr. Dreher: We ourselves are pre-cooling them all. I think the larger organizations which were in a position where they would have any pre-cooling plants, etc., would probably feel the same.

93 On the other hand, if the refrigerating charges were reasonable and reduced down to the service, where the charge would not be so great, many of them would not go to the expense of building a pre-cooling plant, but would take the risks, as it is ordinarily done.

Mr. Durbrow: Do you think it would be a safe thing for the shippers of Southern California to rely entirely upon their own pre-cooling plant without the maintenance of any icing facilities by the railroads?

Mr. Dreher: I think we would rely upon ours, providing the railroad would not delay the shipment and hold it in the desert where there was no ice.

Mr. Durbrow: Yes, but aren't there a great many other shippers who would not and could not?

Mr. Dreher: As I said, I don't think they would or could. They would not want to undertake the expense, and probably could not, your Honor. They could not build ice plants at all stations.

Mr. Durbrow: So that, in your view of the matter, the railroad must still maintain icing facilities.

Mr. Dreher: I think they should.

Mr. Matthews: Mr. Durbrow claims you took your fruit into a hot car; what do you say about that?

Mr. Dreher: No, sir; they are all properly iced.

Commissioner Prouty: He has been into that. You need not go into that.

94 R. O. PRICE, called as a witness, having been first duly sworn, testified as follows:

Mr. Matthews: What is your business, Mr. Price?

Mr. Price: Secretary of the Upland Heights Orange Association.

Mr. Matthews: Your association has started a pre-cooling plant, has it not?

Mr. Price: Yes, sir.

Mr. Matthews: When was that started?

Mr. Price: During the past season.

Mr. Matthews: Was that before or after the hearing?

Mr. Price: The contract was given before the hearing, and the machinery was under construction before the hearing; but the plant has gone up since the hearing.

Mr. Matthews: You have made shipment of thirty-two cars?

Mr. Price: We have made shipment of thirty-two cars. Our shipments began about the middle of May and ended about the third week of June.

Mr. Matthews: Did you have some decay in some of those shipments, three cars, I believe?

Mr. Price: Yes, sir.

Mr. Matthews: Have you a special reason for that?

Mr. Price: All the fruit we shipped from our own association went through without any appreciable decay. The decay
95 referred to there was fruit of outside shipments, for associations for whom we pre-cooled; and of these cars that show decay, the fruit was divided, and our car represented one-half and the other association one-half; and the other association showed decay and ours did not.

Mr. Matthews: What is the cost of that plant?

Mr. Price: About $11,000.

Commissioner Prouty: I don't believe we will go into that now, although you may ask him why he built that plant.

Mr. Price: To pre-cool.

Mr. Matthews: Why did you desire to pre-cool?

Mr. Price: Our chief object was, after studying the Highlands plant and the Pomona plant, to carry out some of the ideas that they did, which appealed to us.

Mr. Matthews: Did you do it because you thought it was cheaper, or because you thought you could get your fruit to market in better shape.

Mr. Price: We thought we could get the fruit to market in better shape.

Mr. Matthews: Do you pre-cool any fruit which is brought into your plant on the cars and stopped there and pre-cooled?

Mr. Price: No, sir.

96 Mr. Matthews: It is all drawn in by wagon?

Mr. Price: Yes, sir.

Mr. Matthews: What is the capacity of your plant?

Mr. Price: It has a capacity of three cars a day.

Mr. Matthews: Do you pre-cool for others?

Mr. Price: Yes, sir.

Mr. Matthews: What is your method? You do not make your own ice?

Mr. Price: No, sir; we buy the ice. We have ice shipped in from Pasadena, and pre-ice our cars there.

Commissioner Prouty: What do you pay for that ice?

Mr. Price: Three dollars at our plant. The concern that represents this system that we work under has the contract for Southern California, and they reserve the right to supply ice for the system.

Commissioner Prouty: What concern are you talking about?

Mr. Price: The Pasadena Ice Company.

Commissioner Prouty: They own some patent on the system that you employ?

Mr. Price: They have bought the rights for California.

Commissioner Prouty: They install the system?

Mr. Price: Yes, sir.

Commissioner Prouty: And they reserve the right to furnish ice?

97 Mr. Price: Yes, sir.

Mr. Matthews: Have you any definite figures yet as to what cooling costs you per box?

Mr. Price: It costs us about the same as we would have to pay the railroad if we did the regular refrigeration. When I say that, I mean to New York. We ship the most of our fruit to New York. This year we would have lost money if we had shipped to any point this side of New York, but our plant is not yet down to an efficient working basis.

Mr. Matthews: You mean you would not have made money if you paid $30.

Mr. Price: No, sir; we would have lost money.

Commissioner Prouty: Was it your idea to pre-cool mostly your own fruit, or to pre-cool for other people?

Mr. Price: Primarily our own fruit. We take this outside fruit simply to fill up our rooms.

Commissioner Prouty: I think that is all.

Cross-examination:

Mr. Camp: How many cars have you pre-cooled?
Mr. Price: Thirty-two cars.
Mr. Camp: How long has your plant been up?
Mr. Price: Been up since the middle of May-
Mr. Camp: How do you estimate the cost per box? What
98 elements have you put into that cost?
Mr. Price: Cost of the ice, cost of the salt that goes to melt it, cost of handling.
Mr. Camp: You have not figured any interest on your plant?
Mr. Price: Yes, sir.
Mr. Camp: Have you figured depreciation on your plant?
Mr. Price: Yes, sir.
Mr. Camp. How much?
Mr. Price: The depreciation on the practical part—we estimated it about ten per cent.
Mr. Camp: Ten per cent per year?
Mr. Price: Yes, sir.
Mr. Camp: And you estimate interest at about six per cent on $11,000?
Mr. Price: Yes, sir.
Mr. Camp: What does the pre-cooling part of your plant amount to, how many thousand dollars?
Mr. Price: That is the cost of the pre-cooling part.
Mr. Camp: $11,000?
Mr. Price: Yes.
Mr. Camp: Ten per cent would be $1,100?
Mr. Price: Yes, sir.
Mr. Camp: Interest $660. You have not charged all that
99 up against those thirty-two cars, have you?
Mr. Price: No, sir; we don't consider we have hardly started yet in our business. We have only operated thirty days.
Mr. Camp: Then your theory is that if you operated full capacity you could charge up interest and depreciation?
Mr. Price: Yes, sir; we expect to operate to full capacity.
Mr. Camp: You mean, three cars per day right through the year?
Mr. Price: No, sir; after the first of April.
Mr. Camp: First of April to first of July?
Mr. Price: Perhaps in March—yes, sir, to the first of July perhaps.
Mr. Camp: Three cars per day during that time?
Mr. Price: Yes, sir.
Mr. Camp: How long does it take to pre-cool under your system?
Mr. Price: Seventy-two hours.
Mr. Camp: Then your pre-cooling room must have a capacity of about twelve cars?
Mr. Price: Yes, sir; our plant has a capacity of twelve cars.
Commissioner Prouty: That seems to be all.

100 I. S. REA, called as a witness, having been first duly sworn, testified as follows:

Mr. Matthews: Mr. Rea, by whom are you employed?
Mr. Rea: The California Fruit Growers' Exchange.
Mr. Matthews: In what capacity?
Mr. Rea: Traveling inspector.
Mr. Matthews: What have been your duties during the last season?
Mr. Rea: Oh, local inspector.
Mr. Matthews: Between what points?
Mr. Rea: Between Chicago and Evanston, Wyoming.
Mr. Matthews: Over what lines?
Mr. Rea: Union Pacific, Illinois Central, Northwestern.
Mr. Matthews: Are you familiar with conditions as to icing over that route?
Mr. Rea: I was.
Mr. Matthews: Also during the past year?
Mr. Rea: At the points I was located, yes, sir.
Mr. Matthews: Will you explain what different methods have been adopted this year, if any, for estimating or determining the quantity of ice used in the cars?

101 Commissioner Prouty: I don't think we will spend any time on that now. Your tables show what the quantity of ice used in icing these cars, including icing at the Missouri River, or possibly at the Mississippi River, ran from nine to twelve tons. Now, the Commission can not fix this ice charge. It does not depend altogether on the number of tons used. It is not worth our while to take time to determine whether your statement is right within a ton or within two tons. If the defendants introduce testimony which tends to contradict the proof of these figures of yours, then you can call Mr. Rea, or somebody else.

Mr. Matthews: Are you familiar with the icing at Chicago?
Mr. Rea: Yes, sir.
Mr. Matthews: Cars destined to Chicago were iced this year, weren't they?
Mr. Rea: Yes.
Mr. Matthews: Were they iced in past years?
Mr. Rea: I am not familiar in past years.
Mr. Matthews: I think that is all.
Commissioner Prouty: That is all, Mr. Rea.
Mr. Matthews: That is all our case in chief, your Honor. We may have one witness on rebuttal.
Commissioner Prouty: We will take a recess now until two o'clock this afternoon.

102 LOS ANGELES, CALIFORNIA, *September* 9, 1910.

Afternoon Session, 2 o'clock P. M.

Mr. Durbrow: If your Honor please, in response to the demand that was made upon us by complainants before the noon adjournment, we have hurriedly prepared a statement here, which we want to introduce in answer to their demand, showing not only the cost of ice at the points specified by them, but at additional points—at Carlin, Ashland, Portland, Red Bluff, Sacramento, Salt Lake City, Santa Barbara, San Francisco, San Jose, in addition to the other points asked for by them, in order that the record will be complete. We are unable, from any data contained in the office here, to show by exact figures what the cost is to us for ice at North Platte, Waterloo, Clinton, Big Springs, and Forth Worth, but Mr. Secrist from memory has told me that the cost of ice at North Platte, Waterloo, and Clinton, is $2.50 per ton, and at Big Springs the cost to the company is $3.50 a ton, and at Forth Worth $3.25 a ton; and with reference to these figures we of course would like to check them and see if they are correct.

Commissioner Prouty: I think those are substantially correct.

Mr. Durbrow: Yes. I will ask to have this introduced in
103 evidence, and I will serve a copy of the statement upon the complainants' attorney.

(Said paper offered and received in evidence and marked Defendants' Exhibit 54, September 9, 1910.)

Mr. Matthews: We have been served with a list which appears to be effective April 1, 1907. It must be an old list. At San Bernardino it is $4.22, which is the old price before their pre-cooling plant was put up. They are not paying that now. I think we ought to have the actual prices paid at the present time.

Commissioner Prouty: I think that is right. I think that is correct.

Mr. Durbrow: We show on the first page the cost paid at Colton in 1909 to be $4.18; and El Paso $4.31; and at Santa Barbara $4.50.

Commissioner Prouty: What do you show the cost of ice at Colton is now?

Mr. Durbrow: For the season of 1910 we have a supplemental list, showing at Colton that they reduced it from $4.18 to $2.50 for the season of 1910; that El Paso has reduced it from $4.31 to $3.81; and at Santa Barbara it was reduced from $4.50 down to $4.

104 Mr. Matthews: We don't operate at those places—Santa Barbara. We are not interested there.

Mr. Durbrow: We do. We are interested there.

Mr. Matthews: They have given the price at Winslow $3.25-$5.07. I don't know what that means.

Commissioner Prouty: I believe that at Winslow they were obliged to bring in ice from away to help out the season, and that made the price at the latter part of the season much more than it was at the first part of the season. As I have tried to say to you, we can not fix these ice charges to a dollar one way or the other, and

slight variations in the price *or* not material. We want to get at it in a general way, what the ice fairly costs. I am satisfied that $2.50 at Colton is low enough.

Mr. Matthews: I don't think we have any objection to that price.

Mr. Camp: They have criticised the statement introduced here by the Southern Pacific Company. These are the actual figures at the present time. (Producing statement.)

Mr. Matthews: At the San Bernardino plant?

Mr. Camp: At the San Bernardino plant we are still buying ice, as I understand it, under the contract which existed at this time.

105 Commissioner Prouty: You still pay $4.20 a ton for it?

Mr. Camp: Yes sir.

Mr. Call: One company buys it from the other. I don't know how they can get at that.

Mr. Matthews: We understand they are icing our cars at that plant with the ice they make there.

Commissioner Prouty: If I remember right, the Santa Fe had a contract with a gentleman to furnish that ice at San Bernardino, and this plant was erected by the Santa Fe as in some way carrying out the terms of that contract. He is still interested in that plant, if I remember right. But what Mr. Camp says is that the Refrigerator Fruit Dispatch actually pays now $4.20 a ton. I thought you would probably object to that price of ice is why I asked to have these figures put in. But I do not see how the Commission can go into that matter any further than to take notice of the general range of the cost of artificial ice. I am satisfied that the Southern Pacific ought not to furnish that ice at Colton for less than $2.50 a ton. That is low enough—perhaps too low. $4.20 would seem to me to be pretty high for ice, provided the Santa Fe can be allowed to use the plant. But if you gentlemen are going to refrigerate your own cars, you will have to charge $10 a ton for what ice you furnish there, because they have a plant there and they have nothing to do it with. You may proceed.

106 C. M. SECRIST, called as a witness, having been first duly sworn, testified as follows:

Mr. Durbrow: Mr. Secrist, will you please state the position that you hold with the Pacific Fruit Express Company.

Mr. Secrist: General manager.

Mr. Durbrow: You reside at Chicago?

Mr. Secrist: Yes sir.

Mr. Durbrow: You have charge of that company's operations?

Mr. Secrist: Yes sir.

Mr. Durbrow: You have a statement prepared, Mr. Secrist, showing the amount of ice contained in cars en route when they have been handled by the Pacific Fruit Express and showing the other data called for by the Commission?

Mr. Secrist: Yes sir.

Mr. Durbrow: Now, your Honor, we have a large statement here

which contains the detail of every shipment that was handled by the Pacific Fruit Express for the months of May, June and July, and we have but this one statement here, and we have drawn off from that statement a final showing as made by the statement itself, and I would like to introduce this statement in evidence and have it filed with the Commission.

107 Now, the complainants may wish to examine this statement and compare it with this other data and see if it is correct, and I have this suggestion to offer—that this statement be left here at Los Angeles, and after they have concluded with it, that it be forwarded to me, and after I have finished with it, that I send it on to the Commission, where it will be filed and finally deposited.

Mr. Call: We don't doubt your word that you have made a correct copy of the document.

Mr. Durbrow: This is not a copy; these are the final results shown. I think it is sufficient.

Commissioner Prouty: I think, Mr. Call, you will very likely want to examine the details to see how they were made up, and that may be filed, and may be left here two weeks. That will be sufficient for you, Mr. Call?

Mr. Call: Yes sir.

Commissioner Prouty: And at the end of two weeks it may be sent to Mr. Durbrow, and he may hold it two weeks and then forward it to the Commission.

Mr. Durbrow: Now, Mr. Secrist, I am going to ask you, please, if you will state in a general way how that statement was compiled. I will state in the first instance to your Honor that the statement shows the number of the car, the point from which it was

108 shipped, date of which it was shipped, destination of car as originally billed, point to which the car was diverted, the date that it arrived at its original destination, and when it was shipped to its final destination under the instructions of the shipper, and the percentage of decay in the car at final destination.

Commissioner Prouty: How is that arrived at?

Mr. Durbrow: Mr. Secrist will testify as to that, your Honor. And it shows the exact amount of ice that has been placed in each one of these cars at each point en route. If your Honor will glance at this a moment it will be apparent to you what it covers. Now, will counsel examine that statement? While counsel is examining it, I wish you would tell Judge Prouty how you compiled the data that is contained in that statement.

Mr. Secrist: Well, the data used in that statement is made up from the individual reports that we received from the inspectors at each station, in response to the request made for such a statement.

Commissioner Prouty: How did you get at the quantity of ice put in the car?

Mr. Secrist: We have an inspector at these icing stations, who checks up the amount.

Commissioner Prouty: Is that the quantity of ice that you actually paid for?

109 Mr. Secrist: Yes sir.

Commissioner Prouty: And from whom do you ordinarily purchase that ice?

Mr. Secrist: Well, commencing on the Pacific Coast, we own our own icing facilities. As we go east we own our own icing facilities from the northern route as far east as the Missouri River.

Commissioner Prouty: That car was iced first at Los Angeles.

Mr. Secrist: Yes sir.

Commissioner Prouty: From whom did you purchase your ice at Los Angeles?

Mr. Secrist: We purchased our ice at Los Angeles from the local ice dealers here.

Commissioner Prouty: How much did you pay for that, approximately?

Mr. Secrist: I think our price last year was $2.40 at the factory. Added to that is the switching charge of thirty-five cents a ton to our icing station, the mileage and the depreciation.

Commissioner Prouty: What do you estimate that the ice costs you at Los Angeles?

Mr. Durbrow: It shows the ice at the plant cost us $2.75, switching charge 35 cents, shrinkage 31 cents, expense of handling into tank 21 cents, making a total charge of $3.62.

110 Commissioner Prouty: Why do you charge shrinkage on that ice? You show the quantity there that you actually paid for.

Mr. Secrist: We buy that ice at the factory.

Mr. Prouty: I understand you buy the ice at the factory, that you put into this car so many hundred pounds of ice.

Mr. Secrist: Yes.

Commissioner Prouty: That was the ice that you took from the factory, wasn't it?

Mr. Secrist: Yes sir.

Commissioner Prouty: Why should you charge the shrinkage on that?

Mr. Secrist: The ice was bought by us at the factory, loaded in box cars, switched to the Los Angeles yard to our icing station.

Commissioner Prouty: I can understand very readily that there is a loss, so that when the ice goes into the bunkers it does actually cost you that much money, perhaps?

Mr. Secrist: Yes.

Commissioner Prouty: But how did you estimate the quantity of ice that went into this car?

A. Why, by measuring the cakes of ice that were put in at our plant.

Commissioner Prouty: Those cakes are manufactured in
111 the same ice plant, and they weigh so many hundred pounds?

Mr. Secrist: Yes.

Commissioner Prouty: You put so many cakes into the bunker?

Mr. Secrist: Yes sir.

Commissioner Prouty: And you determine the weight by counting the cakes?

Mr. Secrist: Yes sir.

Commissioner Prouty: Now, the cakes have melted some before they are put in?

Mr. Secrist: Yes sir.

Commissioner Prouty: And you make no account of that?

Mr. Secrist: No. I could explain. We will say, for instance, a cake of ice as it comes out of the factory and is purchased by us weighs three hundred pounds. This cake wouldn't weigh, when we are ready to put it into the bunkers of our cars, maybe over two hundred and fifty or two hundred and sixty, or two hundred and seventy pounds. We arrive at that by watching the ice at it goes in.

Commissioner Prouty: Did you actually do that, or did your men count the number of cakes and multiply it by three hundred?

Mr. Secrist: We count the number of cakes that go into the car, and multiply it by the weight, what we estimate the weight of each cake is as it goes in.

112 Commissioner Prouty: Now, that car was iced next at Bakersfield, if I remember right. From whom did you obtain your ice there?

Mr. Secrist: We have a contract with the National Ice Company.

Commissioner Prouty: That is artificial ice.

Mr. Secrist: The Union Ice Company, I mean. Yes sir.

Commissioner Prouty: How much do you pay for that?

Mr. Secrist: I will have to refer to the record. I have got the list here, I guess. $2.65 on the platform, 46 cents cost of handling, $3.11.

Commissioner Prouty: Now, the next icing of that car was at Roseville. Is that artificial ice?

Mr. Secrist: Yes sir.

Commissioner Prouty: You paid $3.21 at Roseville. Where was that iced next—Ogden?

Mr. Secrist: Truckee is the next icing station.

Commissioner Prouty: Is that natural or artificial ice?

Mr. Secrist: That is natural ice.

Commissioner Prouty: Was it next iced at Ogden?

Mr. Secrist: Carlin, Nevada.

Commissioner Prouty: That is artificial ice?

Mr. Secrist: That is natural ice shipped in from Truckee,

113 from the mountains.

Commissioner Prouty: Where was the next icing station?

Mr. Secrist: At Evanston, Wyoming. That is natural ice.

Commissioner Prouty: Then North Platte?

Mr. Secrist: North Platte.

Commissioner Prouty: That is natural ice?

Mr. Secrist: Yes sir.

Commissioner Prouty: You may proceed, now, Mr. Durbrow.

Mr. Durbrow: Will you explain how these reports were made by these inspectors along the line—how they were furnished to you—what principles you had in arriving at these conclusions?

Mr. Secrist: In the first place, in order to make up the statement we employed inspectors, placed them at all of the large re-icing

stations at the principal destinations. I think we put on something like sixty different additional inspectors in order to get this report. We provided them with blanks to furnish the home office with an individual record of each car as it passed their station, showing the amount of ice placed in the car—first showing the car number, initial, time of arrival, amount of ice put in, and the temperature; and in case of this report being made at the destination of the shipment, in addition to this information we also give the condition of the fruit upon this report, which was made by joint inspection with the shipper when that was possible. Now, these ice re-
114 ports, these individual reports—a report was made up for each car and was sent into the home office. The inspector, by the way, was advised by telegraph from time to time as to when the cars would get there, so that the inspectors would be on the lookout for them. After these reports were received at the home office they were all consolidated and put into this shape. We regret very much we have not been able to give the month of August, because we consider — are fairly entitled to the August showing, which is a hard refrigerating month. But time did not permit our getting the August report, although we had the inspectors make their report to the home office during the month.

Commissioner Prouty: Do you know how many cars you moved in August?

Mr. Secrist: I do not know from the record here.

Mr. Durbrow: It can be determined?

Mr. Secrist: Oh, very easily.

Mr. Durbrow: In that connection, if your Honor please, we are now engaged in preparing this same data for the month of August, and working as fast as we can on it, and we would like to have the permission to file that, if your Honor please.

Commissioner Prouty: You may send that to Mr. Call, and when he is through with it he may send — to the Commission.

115 Mr. Durbrow: We will have a final calculation made for him.

Mr. Call: You are not preparing April, are you?

Mr. Durbrow: No sir; when did you begin?

Mr. Secrist: We began the first of May.

Mr. atthMews: April is a heavy movement for citrus fruit?

Mr. Secrist: Not under refrigeration.

Mr. Durbrow: Now, this data that you have here represents the entire movement over the lines of the P. F. E.?

Mr. Secrist: Yes sir. That is all the citrus fruit under refrigeration.

Mr. Durbrow: From Southern California territory?

Mr. Secrist: Yes sir.

Mr. Durbrow: I would like to introduce in evidence some sheets here showing the number of cars of citrus fruit shipped to each destination, the average number of pounds of ice used to refrigerate each car in transit, average number of pounds of ice in tanks on arrival of cars, and average temperature at destination, also the

average percentage of fruit in good condition which is the result of this other statement.

Commissioner Prouty: You may introduce that.

(The papers here referred to were offered in evidence and received, and are marked respectively Defendants' Exhibits 55, 56, and 57, September 9, 1910, and are attached hereto.)

116 Commissioner Prouty: The figures I have here, as they have been very hastily compiled by our people at Washington, I do not want you to place any reliance on them at all, show that the total number of cars shipped over the Santa Fe for the last week in April—and I refer now only to cars of which we have a complete record—was five hundred and thirty-one, and the average amount of ice furnished, 19,000 pounds. That is up to and including Argentine. The last week in May, total number of cars was 282, and the average ice furnished was 18,024 pounds—less than in the last week in April. The week ending June 20th, 130 cars moved, and the total amount of ice furnished was 18,000 pounds per car. We have not yet made up July, although the figures have been sent on to Washington. Now, if you can make up, Mr. Durbrow, from your general list there a statement which would cover all shipments for the last week in May, last week in June, and the last week in July, up to the Missouri River, including the icing at the Missouri River, we should be able to compare them with this statement.

Mr. Secrist: That can be done, of course. It is a matter of clerical work.

Commissioner Prouty: It would help us check up, as it were, the accuracy of your statement.

117 Mr. Durbrow: Yes sir. Very well. We will be glad to furnish that, your Honor. You will note that the statement we have introduced shows the exact amount of ice furnished for cars destined to the different points, and the average amount of ice also.

Mr. Secrist: May I call your attention further to the large report, which shows the number of times each car was diverted?

Commissioner Prouty: Yes sir, I noticed that.

Mr. Durbrow: Now, Mr. Secrist, the last columns of these three statements for the months of May, June, and July, show an average per cent of fruit in good condition when the car arrived at the ultimate destination, and with but three exceptions it shows the fruit did not suffer more than three per cent decay, which complainants contend is practically normal. Now, I want to call your attention first to the first sheet in May, where a car moving to Amsterdam, New York, arrived in a condition where there was but ninety per cent of the fruit in good condition, and ask you if you will please explain why that is.

Mr. Secrist: That is in May?

Mr. Durbrow: Yes. Now, will you please explain, Mr. Secrist, why it is that that car did not arrive in perfect condition?

Mr. Secrist: According to our records of this car, as shown
118 on the first sheet, it left the original point on May 9th. It arrived at its final destination on June 5th. That is, within four days of a month en route. The car was first destined to Des Moines, arrived at that point with the ice tank seven-eighths full, temperature 43 degrees—pardon me, this arrived at Des Moines, the first destination, on May 17th, with ice tank seven-eighths full, temperature 43 degrees.

Mr. Durbrow: The shipment was in good condition?

Mr. Secrist: The shipment was in good condition. It was inspected at that point. It was diverted to Detroit. We have no record of this car at all at Detroit. Our inspector did not give us any report on this car at Detroit. I will say in explanation of this that it was very hard to get competent help on such short notice in such large quantities as we needed. We put on sixty inspectors immediately, and some of them were not first-class. It was then diverted from Detroit to Albany.

Commissioner Prouty: Does your record show when it arrived at Detroit?

Mr. Durbrow: No sir; it does not show that, but it shows when it arrived at Albany, the next destination.

Mr. Secrist: We haven't any report of the car at Detroit, although we know it was diverted from Detroit to Albany.

119 Commissioner Prouty: Might that car have been diverted en route and not have gone to Detroit?

Mr. Secrist: It is possible the car might have been diverted at Detroit without stopping there, but it appears that at the next point of diversion, which is Albany, New York, it arrived there on May 29th, that is, twenty days after it was out of originating point. On arrival at Albany the ice tanks were full, temperature of the car was 48, and the condition O. K.—inspection O. K. It was then diverted to Amsterdam, at which point it arrived on June 6th, that is, seven days later, and at that point, which was not an important point, we had no special inspector, but it checked out there ten per cent decay.

Commissioner Prouty: How much ice was consumed in refrigerating that car?

Mr. Secrist: 37690 pounds.

Mr. Durbrow: And you believe that the diversion of that car was the cause of its arrival in that condition?

Mr. Secrist: Yes, I firmly think so, because it was en route almost a month.

Mr. Durbrow: Now, will you please look at the next car which did not arrive in perfect condition?

Commissioner Prouty: Now, one moment. You have an ice charge from California to Amsterdam that is probably the same as to New York?

Mr. Secrist: Yes sir.

120 Commissioner Prouty: How much is that?

Mr. Secrist: Yes, sir.

Commissioner Prouty: Would that cover the ice in this car, no matter how long it was laid out?

Mr. Secrist: Yes sir. It would cover the ice no matter how long it was laid out, provided that there was not more than one icing furnished at the point where it was held. If more than one icing was furnished——

Commissioner Prouty: That is, if this car had been held at Detroit or Des Moines to accommodate the shipper, so that it would require an additional icing there, you would have charged for that additional ice?

Mr. Secrist: No sir; we would have paid for but one additional icing.

Commissioner Prouty: I say, if it had had an additional icing you would have charged for one icing?

Mr. Secrist: Yes, sir.

Mr. Durbrow: The next car shown here—turn to page 13.

Mr. Call: Before he reaches that point, what is the rule in regard to re-icing? Do you ice every day?

Mr. Secrist: We ice at all icing stations.

Mr. Call: Oh no, but where a car is delayed or held, as you say.

Mr. Secrist: No sir; we do not allow the ice tanks to

121 get——

Commissioner Prouty: What is your rule? What are your instructions?

Mr. Secrist: Half full.

Commissioner Prouty: How often do you re-ice?

Mr. Secrist: Whenever it is necessary, to keep the tanks more than half full.

Mr. Call: Your instructions are to re-ice every day?

Mr. Secrist: No sir; our instructions say that the bunkers of a car must be kept more than half full, not allowed to get lower than half empty.

Mr. Durbrow: The next car upon the list which did not arrive in perfect condition is a car destined ultimately to Cadillac, Michigan, if you will turn to page 13.

Mr. Secrist: Is that car car No. 7812? This is a Charleston, West Virginia, car.

Mr. Durbrow: Just read into the record the dates.

Mr. Secrist: The next car shown as arriving in poor condition 91 per cent, was a car originating at San Marino, May 21st; arrived at Cadillac, Michigan, June 5th.

Mr. Call: We do not question those things.

Mr. Durbrow: I am just pointing these out, your Honor. This is the last one we will refer to.

122 Mr. Call: We apparently agree with you that your ordinary refrigeration was a success this year. Our witnesses so testified.

Mr. Durbrow: I want to point out to what extent it was a success

Mr. Call: Do you say it is or is not?

Mr. Durbrow: We say it is.

Mr. Call: We agree with you on that.

Commissioner Prouty: I don't understand there is any question about that.

Mr. Durbrow: We want to point out that the reason these cars fell below the average was because they were diverted.

Commissioner Prouty: The bearing of the testimony would be just what the same general analysis of the figures would show. The testimony now shows the percentage of decay in your refrigerated cars is as great, if not a little greater than the percentage of decay in the pre-cooled cars.

Mr. Durbrow: No sir.

Commissioner Prouty: That is what the testimony shows.

Mr. Durbrow: It does not show that when we come to look at the statement.

Commissioner Prouty: You are not the only one who has put in testimony. The testimony on the other side shows that.

123 Mr. Durbrow: That is right.

Commissioner Prouty: So that I may say the testimony tends to show that the percentage of decay in refrigerated shipments is rather greater than the percentage of decay in precooled shipments. And yet if the pre-cooled shipments show any less decay than refrigerated shipments, of course that is a reason why we ought perhaps to permit the pre-cooling method of shipping. Your answer is that the pre-cooled shipments are not diverted as often as refrigerated shipments, and that the decay in the refrigerated shipments is due to the diversion. Now, on that point you ought to have a right to show, I think, by some anaylsis that these cars in which the decay occurred have been diverted cars that have been on the road a long time.

Mr. Durbrow: That is the point precisely. Those other cars we have already referred to, and that is a third car, and those are the three cars that are shown upon that statement where they arrived in less than perfect condition, assuming that there is only three per cent decay. There is another car in the month of May, Mr. Secrist, which you will find on the fifth to the last page there in May. It is a car that went to Van Wert, Ohio.

Mr. Secrist: That car left originating point on May 7th, arrived at final destination on May 28th, being twenty-one days en

124 route. That was originally sent to Omaha, diverted from there to Chicago, and from there to Van Wert. Now, we have a very good icing record on that car all the way through. It was iced at Colton, Bakersfield, Truckee, Evanston, North Platte, Omaha, Clinton, and Chicago, taking a total of 30,105 pounds.

Mr. Durbrow: That car arrived with 95 per cent of the fruit in good condition?

Mr. Secrist: Yes sir. The car was originally consigned to Omaha, diverted from there to Chicago, arrived at Chicago May 19th, practically twelve days out of the originating point. It was held at Chicago, and then diverted to Van Wert, Ohio, arriving there on May 28th. The car on arrival at Van Wert, Ohio, showed ice tanks in car were full of ice, temperature 48. In this case I am unable to explain the poor condition of the fruit, because according to the record the car should have been in good condition.

Mr. Durbrow: Now, I see over here, your Honor, there are four cars. There is another one that showed nearly eighty five per cent of fruit arriving in good condition, and it is a car that was destined to Joplin, Missouri.

Commissioner Prouty: Now, all that appears from the examination of your report?

Mr. Durbrow: Yes sir; I am not going into the details of
125 this, but I want to point out the fact that 22,800 pounds of ice was furnished for that car, and that it arrived at destinations with 2,750 pounds of ice in the car at destination, and car also was diverted. Mr. Secrist, with the exception of those four cars, that moved through these three months, did every other car that was transported by the Pacific Fruit Express to its destination arrive in perfect condition?

Mr. Secrist: Well, these are the only four cars that showed more than three per cent.

Mr. Call: There is one matter that you might want to explain—why you got the temperature down to thirty.

Mr. Secrist: No, I didn't say thirty. I said forty-eight. That is thirty there, but that is an error. Our record here shows forty-eight. The large record from which that was taken shows forty-eight.

Mr. Durbrow: Now, how long have you been engaged in this refrigerating business?

Mr. Secrist: Three years.

Mr. Durbrow: In that time have you ever authorized the payment of any claim to any shipper, such claim being based entirely upon the fact that a car arrived at destination with less than half the quantity of ice, the bunkers less than half full of ice?

126 Mr. Secrist: Yes sir.

Mr. Durbrow: How many of those claims has the Pacific Fruit Express paid within the last three years?

Mr. Secrist: I can not answer that question, but I wish to make the statement here that it has been a recognized rule among the freight claim agents of the railroads to admit liability for damage whenever it was shown that the ice in the bunkers of cars of fruit under refrigeration was less than half full.

Commissioner Prouty: Have any claims been made against you with respect to these particular shipments?

Mr. Secrist: Not to my knowledge. It will be a little bit early for us to receive any claim on these shipments.

Mr. Call: Has any claim ever been made on pre-cooled shipments?

Mr. Secrist: Not that I am aware of.

Mr. Durbrow: Can you tell if the Pacific Fruit Express has paid out to the California Fruit Exchange and other shippers any considerable amount on such claims?

Mr. Secrist: We have paid a considerable amount; I am not prepared at this time to say how much.

Mr. Durbrow: Can you give us a minimum figure, a safe figure?

Mr. Secrist: Well, it would be pretty hard for me to estimate that,

but I know that the railroads have paid claims on the basis
127 I speak of, to fruit shippers, amounting to hundreds of thousands of dollars in the last few years. I am willing to make that statement.

Mr. Durbrow: On that character of claim?

Mr. Secrist: Yes sir. Of course my suggestion would be now that if the court wishes any further evidence of this, that it be gotten from the freight claim agents of the railroads who pay the claims. From my personal observation in passing these claims I would make this statement.

Mr. Call: The total amount of claims paid from all causes and the total amount on our claims on account of improper refrigeration is in this record now.

Commissioner Prouty: It is hardly worth while to discuss that, because the case already shows.

Mr. Durbrow: I wanted the witness to testify that they had paid considerable sums of money on such claims.

Commissioner Prouty: I understand what the witness virtually says is this, that he admits negligence when the car is not kept half full of ice, and so far as those cars are concerned he admits liability.

Mr. Durbrow: Exactly, and he has paid claims presented by shippers on that character of claim. Mr. Secrist, will you please tell us what the precooling plants of the Pacific Fruit Express in California have cost?

128 Mr. Secrist: The two pre-cooling plants we have erected cost approximately $450,000.

Commissioner Prouty: Where is the other one besides at Colton?

Mr. Secrist: Roseville, California.

Commissioner Prouty: How does that correspond or compare with the one at Colton?

Mr. Secrist: About the same capacity, although we are not prepared there at the present time to pre-cool or send to that plant quite as many cars as we are at Colton, although the power is the same.

Mr. Durbrow: Since the first hearing of this case have you increased the capacity of your plant at Colton?

Mr. Secrist: Yes sir; we have doubled the plant.

Mr. Durbrow: And, as the result of the work that has been done at these plants, what, in your opinion, does it cost to pre-cool a car?

Mr. Secrist: It depends very largely on the number of cars that you pre-cool. It cost a great deal more to pre-cool two or three cars at a time than it would to pre-cool the full capacity of the plant.

Mr. Durbrow: That is, more per car.

129 Mr. Secrist: More per car. But I would estimate that, generally speaking, the pre-cooling at these plants would amount to the equivalent of two tons of ice; that is, the refrigeration necessary to pre-cool a car will be sufficient to make about two tons of ice.

Commissioner Prouty: Do you think you could pre-cool a car for the value of two tons of ice?

Mr. Secrist: Approximately, yes, if it is pre-cooled in good quantities.

Commissioner Prouty: That is to say, if you had a right to stop

those trains entire and pre-cool them, you could pre-cool them for that figure.

Mr. Secrist: Yes sir.

Mr. Durbrow: That is all, Mr. Secrist.

Commissioner Prouty: How many cars have you pre-cooled this past year?

Mr. Secrist: Now, I could not give that from this record.

Commissioner Prouty: Have you any opinion as to how much ice you saved by the pre-cooling, per car?

Mr. Secrist: No, we have not, any more than we know there is some slight saving in the initial icing of the car; that is, the first run of the car. I mean the first couple of icings.

130 Commissioner Prouty: Have you any opinion as to the benefit of pre-cooling for fruit?

Mr. Secrist: Yes sir.

Commissioner Prouty: What is your opinion about that?

Mr. Secrist: My opinion is that it is very essential to the fruit. I would say that the effect of pre-cooling the fruit has been to put the fruit into the eastern markets in much better condition—very beneficial from all standpoints.

Commissioner Prouty: You bring it to a low temperature at once, instead of occupying some three or four days in doing it under refrigeration?

Mr. Secrist: Yes sir.

Commissioner Prouty: Do you think the cost to you of pre-cooling and icing is greater or less than the cost of icing without the pre-cooling? You save something, I understand.

Mr. Secrist: Yes sir.

Commissioner Prouty: Now, do you save as much in ice as the expense of pre-cooling?

Mr. Secrist: No sir.

Commissioner Prouty: So that your charge for pre-cooling and icing ought really to be more than your charge for simply icing?

131 Mr. Secrist: Yes sir; it costs us more.

Commissioner Prouty: Do you at the present time allow the shipper to take his option of pre-cooling and icing or icing simply?

Mr. Secrist: I do not know as I got that?

Commissioner Prouty: At the present time do you allow a shipper who desires to have his cars pre-cooled and subsequently iced, or to have them simply iced—can he do just as he sees fit at the same price?

Mr. Secrist: Oh yes. As I understand it, you want to know if we will pre-cool the shipments. Yes sir; we do.

Commissioner Prouty: At the same price that you ice them?

Mr. Secrist: Yes sir.

Mr. Durbrow: It is not your intention to make any further charge for the superior service of pre-cooling?

Mr. Secrist: It has not been our intention to make any extra charge for the additional pre-cooling.

Commissioner Prouty: Mr. Durbrow, your refrigeration charges vary with the location. To the Missouri River they are how much?

Mr. Durbrow: $62.50.

Commissioner Prouty: And to Chicago?

Mr. Durbrow: $62.50.

132 Commissioner Prouty: The same to Chicago as they are to the Missouri River. If you could analyze this statement here, Mr. Durbrow, and show the quantity of ice actually consumed in icing a car to the different destinations covered by the same charge, I think it would be helpful to the Commission. Take all the cars that moved under the icing charge of $62.50, and pick out the amounts of ice required to take those particular cars to destination. Then we could know how much icing stands against the $62 rate and how much icing stands against the $75 rate or the $70 rate. That could be done, couldn't it?

Mr. Secrist: Oh, yes, it could be arrived at out of these records.

Mr. Durbrow: We will be very glad to furnish that information.

Commissioner Prouty: A tabulation of that kind would be helpful.

Mr. Matthews: It should not show the ice we paid for extra.

Commissioner Prouty: No, sir; it ought not to show the ice you paid for extra.

Mr. Durbrow: I understand your Honor wants to know how much it cost us to perform the service to each of the different destiations, and then compare it with the rate.

133 Commissioner Prouty: Yes, sir.

Mr. Durbrow: I think the Santa Fe have carried their calculations farther than we have, and have such a showing.

Commissioner Prouty: I simply suggest that that might be a helpful analysis of these figures—that is all.

Mr. Durbrow: And if your Honor desires, we will make that statement. It may be you would be satisfied with the statement of the Santa Fe. After you have heard the Santa Fe's testimony, if your Honor still desires it, we will furnish it.

Cross-examination:

Mr. Call: What is the capacity of your Colton plant?

Mr. Secrist: Ice-making capacity?

Mr. Call: Yes.

Mr. Secrist: About 250 tons of ice a day.

Mr. Call: How many cars a day will that take care of—how many cars a day can you ice?

Mr. Secrist: If we would use the full power of the plant, using the machinery with the power that we now use for making ice, it would be just half of that, on the basis of using two tons of refrigeration.

Mr. Call: I mean, furnishing the ice for the initial icing.

134 Mr. Secrist: Oh, when you run the factory to make ice you are using the power. When we pre-cool we take the power, the ice-making power, and put it on the pre-cooling.

Mr. Call: What I want to know is, how many cars you can pre-cool and pre-ice a day, at your full capacity.

Mr. Secrist: We have a capacity there at Colton of pre-cooling a little more than forty cars at a time.

Mr. Call: Can you pre-cool and pre-ice forty cars a day?

Mr. Secrist: Oh, yes, we can do more than that.

Mr. Durbrow: The record already shows it does not require more than three hours to pre-cool a car.

Mr. Call: How many he can do a day with this plant is what I want.

Commissioner Prouty: He must store his ice, of course.

Mr. Secrist: We have 15,000 tons of storage, and can increase that if necessary. That storage is for the purpose of being in shape to discontinue ice-making when we want to pre-cool.

Mr. Durbrow: I think your Honor will recall that the evidence showed we could pre-cool twenty cars every three hours. If our plant has been doubled, it would make forty cars every three hours.

Mr. Secrist: In connection with that, we can pre-cool as many cars as we want. It is not a question of power. We have
135 electric connections, and could in a very short time put in electric power to enable us to pre-cool independent of the icing plant, and we contemplate doing that now. In fact, we are getting bids from the builders of electric machinery for motors to operate the pre-cooler, so that we will not have to take the power off the ice plant.

Mr. Call: You say you believe the pre-cooling process preserves the fruit and places it on the market in better condition. In what respect do you think it places it on the market in better condition?

Mr. Secrist: I think it is beneficial from the fact that it checks decay and waste of the fruit.

Mr. Call: It would appear from your record here that most of your cars had gone through in perfect condition under refrigeration.

Mr. Secrist: Yes, sir.

Mr. Call: If it goes through in perfect condition how could you make it any better?

Mr. Secrist: The fruit that has largely gone through, I think has been strong, and it has been an exceptionally favorable year for putting fruit on the eastern markets.

Mr. Call: So that what you said a moment ago is simply
136 your opinion as to what might be the case in some other year?

Mr. Secrist: Yes. It is perfectly natural, though, to suppose that when you are able to check waste and decay in the fruit, it is beneficial to the fruit.

Mr. Call: I want to segregate those things that are matters of fact, knowledge, and experience, and your opinion—those things which are a mere matter of opinion. Now, your experience this year does not indicate any great superiority in the quality of the fruit which has been pre-cooled over that which has been refrigerated, does it?

Mr. Secrist: We have not pre-cooled a great deal of fruit.

Mr. Call: There is nothing in the record, so far as you know, upon which to base that opinion, is there?

Mr. Secrist: No, sir.

Mr. Camp: Only the testimony of your witnesses.

Mr. Call: If he testifies that way too, I would be glad to know that. I am glad to know he believes our witnesses so thoroughly. I wanted to find out what he knows of his own knowledge.

Mr. Durbrow: You cannot suppose that Mr. Secrist knows as much as your witnesses, of course.

Mr. Call: Oh, no, I was not implying that at all. In get-
137 ting at your refrigeration inspections this year, did you make any different rule with regard to the amount of ice that you put into the cars than you have heretofore?

Mr. Secrist: Oh, no. Our rule has always been to keep our tanks full whenever possible. We never changed our rule in respect to icing cars.

Mr. Call: You did not adjure your inspectors to ram it down to the very pound in order that they should get the best inspection that they could?

Mr. Secrist: We gave instructions that all cars must be carefully iced, and at points where the icing was being done under contract, to watch those very carefully.

Mr. Call: I know, but you did not, on account of this special inspection, tell them to get every pound in that they could during that time?

Mr. Secrist: I do not know that there has been any instructions issued from the office of that kind, or not.

Mr. Call: I have a letter here that seems to be over your signature, from Chicago, in which you say, among other things, to those inspectors, to see that the tanks are filled to capacity—put in every pound of ice possible.

Mr. Secrist: That has always been our instructions.

138 Mr. Call: Now, you say that you get at the weights that you put in there by measuring the chunks of ice?

Mr. Secrist: At some points, yes.

Mr. Call: Did you weigh any of them?

Mr. Secrist: We weigh wherever we can—test weights.

Mr. Call: At what point did you weigh?

Mr. Secrist: I cannot say off-hand just what points. I know my instructions are from time to time to weigh the cakes of ice in order to arrive at the proper amount to put into the cars.

Mr. Call: That is the way you get it, by measuring the chunks?

Mr. Secrist: No, sir; at some of the points we had the ice weighed and put into the tanks of the cars, by counting the cakes.

Mr. Call: Can you tell us any point where you actually weighed it?

Mr. Secrist: Entire amount of ice put in?

Mr. Call: Yes, sir.

Mr. Secrist: Not at any point where we actually weighed all the

ice put in a car. We simply weigh a cake or two, and use that as an estimate.

Mr. Call: Now, this natural ice did not get in the car in 300 pound chunks, did it?

139 Mr. Secrist: No, sir. I say, we weigh it from time to time.

Mr. Call: Do you have different sized chunks, or are they all the same size?

Mr. Secrist: No, sir; the natural ice may be in different size.

Mr. Call: How is it in the places where you buy it?

Mr. Secrist: It has a certain dimension, usually, so that you can estimate it, so many inches wide and so many inches long.

Mr. Call: Without regard to how thick it freezes?

Mr. Secrist: Yes, sir.

Mr. Call: And in handling the natural size chunks, you got at it by the measuring stick, did you, to see how much it weighed?

Mr. Secrist: No sir, by weighing the chunks.

Mr. Call: At what points did you weigh them?

Mr. Secrist: I am not prepared to say at just what point, but the instructions are to arrive at the weights by weighing them.

Mr. Call: Now, where a car is held at a certain point some days for market, you ice it sometimes quite frequently, do you not, several icings?

Mr. Secrist: Oh yes, that frequently happens.

140 Mr. Call: And you charge up to the shipper all of the icings but one?

Mr. Secrist: Yes.

Mr. Call: And that one icing is the icing that the car receives on departure?

Mr. Secrist: Yes sir; the last icing.

Mr. Call: And that generally takes the least ice?

Mr. Secrist: Yes sir.

Mr. Call: And the icings that take the most ice were charged to the shipper?

Mr. Secrist: I don't know whether it is the least ice or not.

Mr. Call: Naturally it would be if it came from a distance and the ice bunkers were low, the first ice would take the most ice, wouldn't it?

Mr. Secrist: I do not quite get your question.

Mr. Call: I say, if the car arrives from some distance point, it would usually require more ice to fill it up, wouldn't it?

Mr. Secrist: It might arrive with the tanks full, or seven-eighths full.

Mr. Call: But that is not the usual thing, is it?

141 Mr. Secrist: I think you will find from this large record here that our cars arrive at destination considerably over half full—three-quarters or seven-eighths.

Mr. Call: So the diversion privilege don't cost you any more ice, or the delays en route do not cost you any more ice, do they?

Mr. Secrist: Well, yes, in some cases it does.

Mr. Call: How could you figure that out?

Mr. Secrist: It would take more ice at some points of diversion, if it is not a regular icing station.

Mr. Call: When the car arrives at final destination you immediately proceed to ice it, don't you?

Mr. Secrist: Not if there is enough ice in the car to preserve it for a reasonable length of time, reasonable unloading time.

Mr. Call: And that charge is against the shipper, isn't it?

Mr. Secrist: I say, we do not ice the car if there is enough in the car.

Mr. Call: What ice you do put in is charged against the shipper?

Mr. Secrist: If the car is held there, yes sir.

Mr. Call: If you think there is not enough to last until the shipper can unload it, you fill it up at the expense of the shipper?

142 Mr. Secrist: No sir; the shipper has a certain length of time, a certain amount of free time in which to unload the car at destination. It is our duty to keep the car properly refrigerated for that length of time. That is forty-eight hours, I think. Now, if the shipper elect to hold his car there without unloading it, we would consider that we were not obliged to keep the car under refrigeration over the forty-eight hours; that is, any additional ice used after that time would be properly chargeable to the shipper.

Mr. Call: Don't you charge the shipper the icing you put in the car at final destination?

Mr. Secrist: Not if it is iced——

Mr. Call: Do you ever ice a car after it arrives at destination without charging?

Mr. Secrist: If we think it needs ice to hold it for this time necessary to unload, this allotted time.

Mr. Call: Now, this statement you have submitted here to the Commission in regard to the amount of ice used does not segregate the amount of ice paid for by the shipper, does it?

Mr. Secrist: No sir; that is not included. It is just the amount of ice that we pay for.

143 Mr. Call: So where these large amounts have been used for a car that has been held at various points, it is more than likely that the shippers paid for that, or a considerable part of it, isn't it?

Mr. Secrist: No sir; the ice shown in this record is the amount of ice that we paid for.

Mr. Call: I ask you whether that does not include all the ice used, regardless of who paid for it?

Mr. Secrist: No sir; the record here covers ice put in by this company.

Mr. Call: That was all put in by your company?

Mr. Secrist: At our expense—that we furnished.

Mr. Call: Does it include the ice that is charged to the shipper?

Mr. Secrist: No sir.

Mr. Call: It does not include ice that is charged to the shipper?

Mr. Secrist: No sir.

Mr. Call: How did you separate that? You have got an inspector's report—how did you segregate it?

Mr. Secrist: The inspector simply reports to us the ice that is furnished for the car. You understand if ice is furnished on account of a shipper the charge for that ice is added to the way bill
144 in addition to the regular refrigeration charge. We do not consider that we are interested in the price of that ice or in that charge. It is added to the waybill and collected in addition to the regular refrigeration charge.

Commissioner Prouty: Who pays the icemen for that ice?

Mr. Secrist: The railroad company.

Commissioner Prouty: You do not pay it?

Mr. Secrist: No sir.

Commissioner Prouty: Who directs that ice to be put in?

Mr. Secrist: Well, it is put in under the direction of the railroad company.

Commissioner Prouty: Is it put in by direction of your inspector?

Mr. Secrist: If we have an inspector there, in consultation.

Commissioner Prouty: Or by the direction of the shipper or by the direction of the railroad?

Mr. Secrist: It can be either. If we have an inspector at that point he will interest himself to the extent to see that the car going out is properly iced.

Commissioner Prouty: You say the railroad company pays that and charges it on the waybill as an advance charge?

Mr. Secrist: Yes sir.

145 Commissioner Prouty: And that money is paid to the railroad, and never goes through your treasury?

Mr. Secrist: No sir.

Mr. Call: Now, Mr. Secrist, inasmuch as you gave some credit to the testimony of our witnesses on that point, are you willing at this time to concede that their method of precooling and pre-icing is successful in the shipment of fruit?

Mr. Secrist: Well, I think that any method of pre-cooling is beneficial to fruit. I would concede that—that any kind of pre-cooling, I don't care what the method is or how it is pre-cooled, is beneficial.

Mr. Call: You would probably be willing to concede that their method of precooling and pre-icing and taking the fruit through to market, where it passed through in a reasonable length of time, is successful?

Mr. Secrist: No sir, I would not.

Mr. Call: You think fruit that goes through that way is not in as good shape?

Mr. Secrist: No sir; I do not.

Mr. Call: In what respect do you find it faulty?

Mr. Secrist: The record show- that the temperature rises en route, and it arrives at destination at a much higher tempera-
146 ture than it has when it leaves the original point.

Mr. Call. The air in the car, you mean?

Mr. Secrist: The fruit must be influenced by the air in the car.

Mr. Call: If the fruit arrives and is quite satisfactory to the trade,

and sells, and looks all right, and is sound, why the condition of the air is not so important, is it?

Mr. Secrist: Well, I don't know. I can't say as to that. But it has been our experience, and I think it will be borne out by the statements of any refrigerating engineer, that a car of fruit arriving at destination with a temperature of 40 degrees is in better shape than fruit arriving at destination with a temperature of 70 degrees or 75 degrees.

Mr. Call: You don't know how the fruit itself did arrive in any of those cars, do you?

Mr. Secrist: Well, only by inspection.

Mr. Call: Inspection in what way? You put your thermometer in the open air space?

Mr. Secrist: All the inspection we make is the temperature of the fruit, and not the temperature of the air.

Mr. Call: I know, but on that pre-cooled and pre-iced fruit, do you mean to say that you take the temperature of the fruit?

Mr. Secrist: Yes sir, that is the instructions to the in-
147 spectors.

Mr. Call: Do you know whether any of them did that or not?

Mr. Secrist: Oh, I think they did.

Mr. Call: Do your inspection reports show that they did take the temperature of the fruit at any place?

Mr. Secrist: Well, the inspection of the pre-cooled and pre-iced cars is only at destination.

Mr. Call: So you only took the temperature of the air?

Mr. Secrist: It is my understanding that the temperatures reported by our inspectors are the temperatures of the fruit itself. That is their instruction.

Mr. Call: Who gave those instructions?

Mr. Secrist: They were issued by our office.

Mr. Call: In what way do they give the temperature of the fruit?

Mr. Secrist: By inserting the thermometers in the fruit.

Mr. Call: Have you any report of that kind, that they did insert the thermometer in the fruit?

Mr. Secrist: I think so.

Mr. Call: Will you produce them?

Mr. Secrist: I say, I think so. I haven't the reports here.

Mr. Durbrow: I would suggest here that we have reports
148 now enough to fill this room, but we invite them to go to Mr. Secrist's office at any time and inspect any of those reports, and I think that is the most satisfactory way, and not require us to bring those reports here. We would be very glad to have them go there.

Mr. Secrist: I wish to make the statement that we have done everything we possibly could to make a true and complete report of these four months' business. The extra cost to our company has been over $21,000 for the three months.

Commissioner Prouty: Do you think Mr. Edwards and Mr. Dreher

are mistaken in their opinion that they can pre-cool and pre-ice and ship fruit?

Mr. Secrist: Yes, I think that is impossible during the hot summer months.

Commissioner Prouty: Why, their testimony is that they have done that.

Mr. Secrist: They have done it, but not during this time of the year.

Commissioner Prouty: Well, take the statement which I saw, the one which I read, there was a shipment which moved the last of August, and was received in Pittsburg on the 30th of August, which had come through from Pomona, and the fruit was in good condition.

149 Mr. Secrist: And, as I recall it, the temperature was 60 degrees.

Commissioner Prouty: The report so stated, 60 degrees. My understanding is that was the temperature in the car. I wrote suggesting that the temperature in the car be taken, and that has been complied with. Perhaps the temperature of the fruit is what ought to have been taken.

Mr. Secrist: It is possible I am mistaken in that, but I was quite sure that our inspection applied to the temperature of the fruit itself.

Commissioner Prouty: Mr. Secrist, if it is possible for Mr. Edwards of the Pomona plant, and Mr. Dreher, to pre-cool and ship their fruit through in even better condition than you can get it through under your system, doesn't it occur to you that it ought to be sent in that way? That seems to be the cheapest way of sending it.

Mr. Secrist: Certainly, I think the fruit ought to be handled in the most economical way.

Commissioner Prouty: It seems to me there is a good deal of difference both from the transportation standpoint and the shipper's standpoint, whether this fruit is pre-cooled at a plant to which it is drawn in by wagons and from which it is shipped out, and

150 the process which goes on here at Los Angeles, where it is shipped in by rail and stopped off in transit. Now, they cannot pre-cool that fruit here with any better results, nor with as good results, in your opinion, as you can out there at Colton?

Mr. Secrist: No sir.

Commissioner Prouty: It is somewhat doubtful whether you ought, on any theory of this case, to be required to go into competition in that way. But where the shipper pre-cools his fruit as they do at Highlands and as they do at Pomona, that is rather a different proposition. Now, you would say, and say with great truth, that if everybody is allowed to pre-cool his fruit in the way, for example, that it is done here at Los Angeles, that you could not tell what demands would be made upon you?

Mr. Secrist: We could not tell how much ice to prepare.

Commissioner Prouty: Now, would that be so if pre-cooling was only allowed in case of individual plants?

Mr. Secrist: Yes, to that extent.

Commissioner Prouty: But you would know where the plants were, and what they were, and how much was shipped from those plants, so that you could virtually gauge the amount of ice which you would be required to furnish, couldn't you? Is it your thought that if shippers were allowed to pre-cool fruit as Mr. Dreher
151 does that it would be done to the extent that you would not have anything to do at your Colton plant?

Mr. Secrist: We would not be able to use our Colton plant as we anticipated using it. You understand that these plants were erected on the request of the shippers here.

Commissioner Prouty: Those facts are all in the case, and I went out and inspected that plant of yours at Colton, and also the Santa Fe plant at San Bernardino. It is your thought that if the shippers were allowed to erect these pre-cooling stations like the one at Pomona, there would be no business to occupy your plant?

Mr. Secrist: No. We are preparing to take care of all the business. And I might further state to you that in my opinion the matter of pre-cooling is simply a matter of preparing the fruit for shipment, simply a matter of preparation, and that we have always understood that after fruit is prepared for market and it was brought to us for handling, that it was our duty to perform the refrigeration service.

Commissioner Prouty: They don't want to perform any refrigeration service.

Mr. Secrist: I understand that.

Commissioner Prouty: You admit that these shippers
152 might, if they saw fit, put their fruit in the car and tell you not to ice it. That is their idea. Suppose a shipper wants to ship his fruit during July and August—suppose he is insane, and wants to ship his fruit without icing through July and August, wouldn't you recognize his right to do so?

Mr. Secrist: Oh, yes.

Commissioner Prouty: You would simply hook onto the car at his place of business and haul it through to destination?

Mr. Secrist: Yes, sir.

Commissioner Prouty: Now, if that is so, why shouldn't he have a right to fill up the bunkers once, seal them up, and tell you to take that car and haul it through?

Mr. Secrist: Well, I would consider that we would be responsible for the refrigeration of that car.

Commissioner Prouty: If you are, you ought to have a right to refrigerate—there is no question about that.

Mr. Secrist: That is what I would consider, that the responsibility would rest on us, even if they chose to give us such instructions.

Mr. Call: You regard it as a legal question, that you are liable and responsible for the refrigeration?

Mr. Secrist: If we are not responsible, it would be a mat-
153 ter of arranging the matter.

Mr. Call: You are not responsible for the proper refrigeration of a car which you are forbidden to touch?

Mr. Secrist: No.

Mr. Call: Then you do not see any particular ground upon which you could ask for the right to refrigerate, but it is a question of law then, the way you look at it?

Commissioner Prouty: Well, Mr. Call, these people have constructed this plant there, and they have done it after consultation with y-ur folks and upon the idea that pre-cooling was a desirable thing, and that they were to refrigerate these shipments. Now, does it occur to you that they ought to be required to let you do all that refrigeration in a way that would put their plants out of use?

Mr. Call: No, not for a moment. But our idea, which may be erroneous, is that they should be able to compete. Now, we have say a lot of farmers, who are not particularly educated in refrigeration matters, and their plants are small, where they cannot do it as economically as the railroads can do it. The railroads have conveniently located plants, where it doesn't cost them very much to do it. Make them do their duty, and if that is the best way to handle the fruit, why can't they do it? And if they can
154 do it, why can't they do it as cheap as we can do it? Why shouldn't they be able to handle that business in such a way that any farmer would be glad to have them do it for him rather than do it for himself?

Commissioner Prouty: Is it your contention that these railroads could take this fruit into San Bernardino, pre-cool it there, ice it there, and send it through without a subsequent icing?

Mr. Call: They can do it if they will pre-cool it properly, undoubtedly. But they cannot do it by putting a blast on and cooling it down to zero.

Commissioner Prouty: The testimony shows it was cold through. The testimony showed in the other case that those oranges, after they had been pre-cooled, were 33 degrees and 34 degrees above zero only.

Mr. Call: Yes, but they have got the outside oranges there, and you will find the middle ones just as warm as they ever were, or they wouldn't require the amount of ice. It is absolutely a physical impossibility that they could use that amount of ice if they were cold.

Commissioner Prouty: As you pre-cool the fruit you cool the box and the orange, and you pack it in there solid. Now,
155 that fruit may not absorb the heat, even though the air in the upper part of the car gets warm. I do not know why it is that you can send that through without any ice, and that it takes just as much ice when it is pre-cooled at those plants. That seems to be the fact.

Mr. Call: It is the fact, but I am not scientific enough to explain the reasons why. But here is the proposition that I think

we can safely bank on, and that is, if we can do it, why can't they do it, with all their superior knowledge and facilities?

Commissioner Prouty: They don't have the opportunity to do what you do. The oranges come into your plant, and they are taken almost from the trees, and packed or put into the cold storage plant. Now, it seems to me that it can be urged with great force that a system of that sort is very superior to a system which takes the orange into your plant, which keeps it there perhaps a week before it gets into the car, which takes the car to San Bernardino, and they for the first time refrigerate the fruit. Now, I feel that the two systems are entirely different, and I do not believe they can refrigerate at San Bernardino in the way that Mr. Dreher can refrigerate at his plant.

Mr. Call: This Los Angeles plant was a good test on that proposition. It shows a little more decay, it is true, but it takes
156 two days to get in there, and the reason is that they did not have a schedule for getting into Los Angeles.

Mr. Durbrow: That is not the fact.

Mr. Call: It has been so testified.

Commissioner Prouty: You say this company should be able to compete with the shipper in the refrigeration. Their charges are subject to regulation, because they have a monopoly, at least on the theory that they can perform this service cheaper if they have a monopoly, and I very much doubt whether they ought to be required to bring those oranges into Los Angeles and allow some company here to refrigerate them and send them on. It don't seem to me that is at all the same proposition.

Mr. Call: I do not think it is either. We would not ask you to make the order to allow us to ship them around to various parts of the country and refrigerate, and it is undoubtedly putting a burden on them to handle those cars twice. What we say is this, that if we can do it, that the plants which are only three or four hours away from our packing houses, as appears by the testimony in the record—and we have checked them all up—that they ought to be able to do this business and do it right, and if they do it on a fair basis, there wouldn't be anybody else wanting to do it.

157 Commissioner Prouty: Is it your suggestion that they ought to put in some different system of pre-cooling at San Bernardino?

Mr. Call: Their system might perhaps, with slight modifications, be arranged so that they could do it cheaper.

Commissioner Prouty: You think the orange must be cooled very slowly?

Mr. Call: Oh yes, it must be cooled very slowly. They cannot do it in three hours. If they would put it in there thirty-six hours, then the orange is cooled all the way through.

Commissioner Prouty: You may proceed with the cross-examination.

Mr. Call: What do you think about those figures? Can't you do what these shippers can do?

Mr. Secrist: Why, if we can pre-cool the orange in three hours without damaging it, it is a benefit as against thirty-six. If we should damage any fruit we should expect to pay for it.

Mr. Call: Of course you are not pre-cooling an orange, a single orange; you are pre-cooling a tightly packed box, weighing about 75 pounds, you have got your cold air all through that. That is the trouble, that you freeze the outside of the orange before you get it cooled all through.

Mr. Secrist: No, we have never done that.

158 Mr. Call: Well, we don't agree on that, but if these shippers can do it as successfully——

Mr. Secrist: We say ours is more successful. It is just a matter of opinion between us as to the merits of these different processes.

Mr. Call: You are not the man to stick to a proposition after finding that it is wrong?

Mr. Secrist: We spent $65,000 in experimenting in these pre-cooling plants, and after we spent $65,000 in experimenting, we spent almost half a million dollars in erecting the plant. We had the most efficient refrigerating engineers in the United States to consult with.

Mr. Call: I know, and it is hardly in order to take up at this hour the question of the value of particular cooling plants, and I do not wish in the least to reflect in any way on your process. I do not want to run counter to your set views. I want to ask you this, that if you found the growers' way was the best way——

Mr. Secrist: —We would probably adopt it.

Mr. Call: Couldn't you do it?

Mr. Secrist: We would probably be forced to in time.

Mr. Call: You could do it cheaper and better than they

159 could with their isolated orchards all over the country—you could do it, and ought to do it if it is the best way.

Mr. Secrist: We are trying to do the best way.

Mr. Call: If it is the best way, you could and would, wouldn't you?

Mr. Secrist: Oh, yes.

Mr. Call: That is all.

Mr. Durbrow: In that connection, your Honor, I would like to direct your Honor's attention and also counsel's attention to the fact that the last pages or sheets of the large exhibit that was introduced discloses that the shipments that came from Southern California points to the east, where the cars had been pre-cooled and preiced by the Pacific Fruit Express, moved forward to these destinations without icing, and in some cases it was furnished in transit, but in the large majority it was not—showing in each instance that the shipment arrived in perfect condition at destination.

160 C. M. GAY, recalled as a witness, testified as follows:

Direct examination:

Mr. Durbrow: I would like to have you explain, if you will please, Mr. Gay, why it is, when a shipment moves forward from California

here, which has been pre-cooled and pre-iced by the refrigerating companies and is re-iced in transit, that but little additional ice is required in the refrigerating of those cars than if they actually moved under ice. And you might incorporate in the same answer how it is that the shippers' shipments, pre-cooled and pre-iced by them, not requiring any ice, compare with our own shipments which move through under refrigeration—wherein the difference is in the consumption of ice in transit.

Mr. Gay: There are two sources of heat which is taken up by refrigeration. One is the heat content of the article refrigerated, the fruit itself; and the other is the heat conducted through the walls of the car or which comes through in any way by the air pressure against the car in traveling. One is the sensible heat of the fruit, and the other is the heat conduction which comes through the car walls. In the process of pre-cooling, as practiced by the
161 railroads, the fruit is reduced to a low temperature in three to five hours, according to the temperature of the fruit, by a very strong blast of cold air, and the rate of transmission between the inside and outside of a car, of heat taken up by refrigeration, depends on the differential temperature as between the inside and outside. Naturally throughout any refrigeration, whether in ice or cold air, when the car is refrigerated and starts out in the hot sun, when it is very cold on the inside and very hot on the outside, you will have the great amount of heat transmission through the wall of the car. If the temperature was equal on each side there would be no heat transmission, but there being a low temperature upon the inside by virtue of the fact that the fruit has been reduced to a carrying temperature, the car starts out and immediately transmits more heat from the outside to the inside. This makes up a large part of the apparent *different*, or the apparent equality, as between a car which has been pre-cooled and a car which has not.

Commissioner Prouty: That all means that a very little ice will keep the temperature of a car at 60 degrees, and it takes a great deal of ice to keep it at 34 or 35?

Mr. Gay: Exactly. And then, following that up, the temperature gradually rising upon the car which is pre-cooled and pre-iced, naturally the rush of heat transmission from the outside to the inside of the car is slower as it approaches destination, simply
162 because your fruit is warm; in other words, it is not any longer under any considerable amount of refrigeration—it is approaching the normal temperature.

Commissioner Prouty: You never would think it necessary to refrigerate an orange unless that orange was to have somewhere a temperature above 60 degrees, would you?

Mr. Gay: Depending upon the time before it would go to market.

Commissioner Prouty: Ordinarily you would not refrigerate an orange unless there was some danger that that orange would encounter a temperature above 60 degrees, would you?

Mr. Gay: I should say about 55 degrees.

Commissioner Prouty: Now, if that is so, why is not every practical purpose subserved if you can take that orange from the tree into

the packing house and keep it until you deliver it to the retailer, at a temperature not exceeding 55 or 60 degrees?

Mr. Gay: If you could always maintain that temperature absolutely, it probably would be practical for all transportation purposes; but I know of no practical way in hot weather of maintaining such a temperature.

Commissioner Prouty: Now, Mr. Gay, there is a record, signed by the inspector of the Pacific Fruit Express, in which he says
163 the temperature of the air in the car upon the arrival at Pittsburg, Pennsylvania, on the 30th day of August was 60 degrees. He says that the ice tanks were one-fifth or one-fourth full. That car had been pre-cooled and pre-iced at Pomona, California, and had been transported to Pittsburg, Pennsylvania, and the inspector of the refrigerator company states that the temperature was 60 degrees, and if that was the temperature of the air after the door was opened it is very plausibly suggested by the other side that the real temperature may have been more—and that fruit went through in good condition.

Mr. Gay: 60 degrees is a critical temperature in some cases, in other cases it is not. There are four elements that go into the consideration of holding fruit—the decay which comes from heat, moisture, light, and time. Every proposition that comes up as to holding fruit or refrigerating fruit must take those four elements into consideration. If you wish to hold your fruit at its maximum length of life before it is placed upon the market, you will reduce that to the lowest practical carrying temperature, a temperature low enough to stop the multiplication of spores. You will keep the moisture away from that fruit as much as possible, and exclude the light as much as possible, because those three elements of decomposition
164 must be reduced to a minimum, and in such a case you can extend the time of placing that fruit in the market.

Commissioner Prouty: That is all probably so, but these orange shippers out here in California do not want to pay for all those things unless they are necessary. Now, if Mr. Dreher can send his fruit through without keeping the temperature down to 40 degrees, and get just as much for his fruit when it gets there, and if it does not cost him or anybody else as much by 25 or 30 dollars a car, why should he not have a right to do so?

Mr. Gay: That is a question for them to determine.

Commissioner Prouty: That is all.

Mr. Durbrow: I would like to ask Mr. Gay one further question. Mr. Gay, I think there was testimony which indicated clearly, as I understand it, that there was a danger of the dew point being reached, that where a shipment moved forward under refrigeration, cooled by air, placed into the spaces where the temperature was high, and the atmosphere itself being of a high temperature, that a dew point would be formed, and the fruit would thereby suffer deterioration. Do you concur in that opinion?

Mr. Gay: Certainly.

Mr. Durbrow: Now I would ask you if the same result would follow if the condensation was formed, where the object refrigerated

was exposed to the outer atmosphere, where evaporation would take place.

Mr. Gay: No, it would not. In like manner, if your
165 clothes have become moistened from any reason, from the damp atmosphere, you naturally hang them up where evaporation can dry them. But in a car, if by rising temperature and high humidity, condensation or moisture is formed, there is no means for evaporation, no chance for evaporation to take place, for there are only the conditions which have produced the precipitation. Where it is exposed to the outside atmosphere there are the conditions which tend to promote evaporation.

Mr. Durbrow: So that if a cold object was suddenly exposed to a higher temperature in a car, and condensation was formed, and particularly in view of the fact that there was a moist object in the car, several tons of ice, which would be a source of producing moisture constantly, there would be greater danger of deterioration than if that very same object was suddenly exposed to a high temperature in the outer air, where evaporation would take place?

Mr. Gay: There would.

Mr. Call: What is the scientific reason for the fact that fruit pre-cooled by the shippers does not require ice in transit, while fruit pre-cooled by the railroads requires almost as much as it does under refrigeration?

Mr. Gay: You state that as a fact, but I am not prepared to
166 to admit it.

Mr. Call: Assuming that to be a fact, what is the scientific reason for it?

Mr. Gay: There would be no difference.

Commissioner Prouty: He might not want to give a scientific reason for something that is not a fact.

Mr. Gay: There is no difference, and would be no difference. You reach the same temperature in your fruit in that car, and ice it in the same manner, and you are going through in the same manner.

Mr. Call: If it is a fact that there is ice required in the fruit pre-cooled by the carriers, it shows they don't get the temperature, don't it?

Mr. Gay: Not necessarily.

Mr. Call: What other reason can there be?

Mr. Gay: I have explained that. You start your car off and get a higher differential temperature to start with. The rate of heat transmission is greater between the inside and outside. In other words, with ice kept in there all the time to maintain a low, safe temperature in the car, you are bound to have a greater rush of heat transmission between the outside portion and the inside portion of the car. Then if you put in a little dab of ice, it does not
167 hold the temperature down.

Mr. Call: I know, but you are putting in the same quantity of ice and the same quantity of fruit.

Commissioner Prouty: In one case it gets a temperature of per-

haps 40 degrees, in the other cases you get a temperature of 60 degrees.

Mr. Gay: That is the difference.

Commissioner Prouty: You say 60 degrees is just as good as 40?

Mr. Call: Apparently it is. I am not scientific on this question, but anyway we get our fruit through intact.

Commissioner Prouty: Mr. Durbrow; would you be willing to make a rate of so much for pre-cooling and pre-icing, and allow the shipper to say pre-cool and pre-ice? That would involve simply pre-cooling at Colton and icing the car, sealing it up, and sending it through.

Mr. Durbrow: I would be very glad to do that and end this case, if we could secure a ruling of the Supreme Court of the United States, or from any other authoritative source, which would relieve us from liability and responsibility in case that shipment suffered deterioration or damage in transit.

Commissioner Prouty: Well, they do in the east have reg-
168 ulations of this sort; the shipper of the fruit may specify a half tank of refrigeration instead of a full tank. I do not know what conditions they are under here, and I do not know what the conditions of that contract are, but I know that is done repeatedly. He may specify the initial icing and no subsequent icing, or he may specify initial icing and subsequent icing.

Mr. Durbrow: That is the fact, your Honor, and particularly with reference to the packing houses in the vicinity of the Missouri River, covering those packing house products, they have a rate in effect there, as I am advised, whereby the shipper can, as your Honor says, put one-half of the ice in the car, at his election. But the carriers who perform that service, your Honor, have learned by experience that at certain seasons of the year, where certain particular commodities are transported, that the commodity moves forward to destination without suffering deterioration or damage; and the carriers in California, on the other hand, have learned by experience, and particularly from these tests that we have made recently, that you cannot safely transport an orange from California to an eastern destination, pre-cooled and pre-iced, without re-icing it in transit. And then we are confronted with this difficulty, and that is this; that we are obliged to protect ourselves from our legal liability. We are obliged to take care of that car in transit, because, as your
169 Honor knows, under the rulings of the Supreme Court of the United States, we cannot relieve ourselves from the full share of our common law liability for any damage that may be occasioned while the shipment is in our charge.

Mr. Call: One moment.

Commissioner Prouty: Now, gentlemen, I do not think that we had better take time to discuss this question. You are expected to argue this before the Commission, and then I hope you will argue all these questions before the Commission. I simply wanted to know whether you might not be able to make that kind of a rate, and the objection to making it, you say is because you could not relieve yourselves from liability.

Mr. Durbrow: Yes, your Honor, that is it; and I have gone on record as advising—and I think a good many other counsel have also—have gone on record as advising their traffic departments that they cannot permit the shippers to enter into such a contract. And that is the reason, and it is only because of the legal difficulties, that we would not be willing to make such a rate.

Mr. Call: We do not agree on that proposition.

Commissioner Prouty: No, but I do not think we had better take time to discuss it here, Mr. Call.

170 Mr. Durbrow: That is all the witnesses we want to offer, your Honor.

Commissioner Prouty: Mr. Camp, you may proceed.

171 J. S. LEEDS, recalled as a witness, testified as follows:

Mr. Camp: Mr. Leeds, have you caused to be made a statement of refrigeration revenue and cost of ice for refrigeration of citrus fruit from Southern California during the season November 1, 1908, to October 31, 1909, relating to cars shipped via the S. F. R. D.?

Mr. Leeds: Yes sir.

Mr. Camp (Showing paper to witness): Is that the statement you have had prepared?

Mr. Leeds: Yes sir.

Mr. Camp: I offer this.

(Paper here referred to offered and received in evidence, and marked defendant's exhibit No. 58, September 9, 1910, and same is attached hereto.)

Mr. Camp: How did you arrive at the cost of ice, which totals $511,889.36?

Mr. Leeds: I entered each individual car on a sheet, and took the individual icings from point of origin, including the initial icing, to the point of final destination, and I computed the cost of

172 the ice at the price at which we were buying the ice at that time at the various points where these icings were done.

Mr. Camp: How did you get at the revenue?

Mr. Leeds: I took the refrigeration charge billed on the waybill for each of those cars.

Mr. Camp: Then these figures on this sheet are the actual figures shown by the records, and are not a computation or estimation?

Mr. Leeds: There is no estimation in it; they are actual figures.

Mr. Camp: Have you your trial balance here—the S. F. R. D. trial balance?

Mr. Leeds: Yes sir. No, you mean those balance-sheets attached there? There are four years of it, including 1910.

Mr. Camp: The statement which I have handed to the Commission shows a surplus over the actual cost of ice, of $170,907.90.

Mr. Leeds: Yes sir.

Mr. Camp: $17.33 per car. What other items in your judgment enter into the cost of refrigeration in addition to the cost of the ice?

Mr. Leeds: The providing for and the maintenance of the device in the refrigerator car devoted to that purpose.

Mr. Camp: You are not speaking of a ventilated car or in-
173 sulated car, but the refrigerating device in the car?

Mr. Leeds: No sir. The car which I am talking about is a refrigerator car, provided for that purpose expressly.

Mr. Camp: About how much extra cost is there in a car by reason of the refrigerating device?

Mr. Leeds: I am not advised on that point.

Mr. Camp: Well, give me a minimum.

Mr. Leeds: Oh, a minimum would be at least $150 a car.

Mr. Camp: You have 6000 cars?

Mr. Leeds: 6000 cars.

Mr. Camp: About what proportion of that refrigerator revenue comes from citrus fruits—the citrus fruit movement?

Mr. Leeds. That would be demonstrated by that report. About two-thirds of it.

Mr. Camp: So that in your opinion, whatever interest and depreciation should be charged on the $150 per car per year, two-thirds of that should be charged up to citrus fruit refrigeration?

Mr. Leeds: Yes sir.

Mr. Camp: And what rate of interest do you pay on those cars?

Mr. Leeds: We pay 5 per cent on the capital invested.

Mr. Camp: That would be five per cent on $150 per car per year?

174 Mr. Leeds: Yes sir.

Mr. Camp: What rate of depreciation do you allow?

Mr. Leeds: We pay 5 per cent. That probably is not sufficient to maintain the equipment, but it was arrived at by estimate, and is the basis upon which we are now working.

Mr. Camp: To what extent, in your opinion, does the use of the refrigerator device in a car increase the car repairs?

Mr. Leeds: Well, whatever additional repairs the use of that equipment would take over and above the ordinary car repairs, would seem to me to come from that source.

Mr. Camp: Well, your total car repairs were $391,585.

Mr. Leeds: Our average for four years is about $350,000 a year.

Mr. Camp: How much of that is in excess of the repairs of a ventilated car without the refrigerator device?

Mr. Leeds: I cannot testify to that, but it is something more.

Mr. Camp: There is some excess?

Mr. Leeds: Yes sir.

Mr. Camp: And that car depreciation you have given as 5 per cent?

Mr. Leeds: Yes sir.

Mr. Camp: On the value?

Mr. Leeds: Yes sir.

Mr. Camp: Now, to what extent are your general expenses and your traveling agents' chargeable to the refrigeration?

Mr. Leeds: Well, we maintain more force on the road, and
175 perhaps it requires more supervision on account of the icing and handling refrigerated stuff than if we were carrying for

ventilated stuff only. We would dispense with some of our outside force if we were not doing a refrigeration business.

Mr. Camp: Have you any idea—can you give us an estimate of the reduction which might be effected in your expenses by doing away with refrigeration?

Mr. Leeds: Well, it would only be a guess. I could not tell very much about it, but 10 per cent at least.

Mr. Camp: Your general expenses were $19,900; your traveling agents and inspectors, $23,000 for the year.

Mr. Leeds: Yes, that would be virtually about $45,000 or $50,000.

Mr. Call: How much do you suppose it would cut Mr. Leed's salary?

Mr. Leeds: It might cut it a good deal.

Mr. Camp: I think that is all, Mr. Leeds, unless you have some statement to make.

Commissioner Prouty: Mr. Leeds, you have given in that statement the cost of ice; and could you give in connection with that the number of tons of ice?

Mr. Leeds: I can do it, yes. It would be a pretty large contract, and we contemplated doing that in the first place; that is,
176 in connection with this; but it occurred to me that dollars and cents was the main proposition that we were dealing with.

Commissioner Prouty: Well, that is true, but you pay, for example, $4.20 a ton at the San Bernardino plant, and the Southern Pacific only charges $2.50 a ton at the same kind of a plant. Now, these shippers ought not to be charged on any improper contract which you make.

Mr. Leeds: Please understand that our basis with respect to the San Bernardino plant is not yet fixed. We are not through with our old contracts with the Azusa Company.

Commissioner Prouty: You did in the year which you have covered pay $4.20 a ton?

Mr. Leeds: Yes sir; our ice will be based on its cost of manufacture when we get to it.

Mr. Call: There isn't any reason why you cannot make it as cheap as other folks in that plant, is there?

Mr. Leeds: Other people pretend they can make it very cheap sometimes.

Mr. Call: The Southern Pacific people, you would believe them, wouldn't you?

Mr. Leeds: Oh, yes.

Mr. Call: Can't you make it as cheap as they can?

177 Mr. Leeds: Possibly. It depends on circumstances.

Mr. Call: Now, you said, Mr. Leeds, here, that you thought you ought to charge up most of these expenses, deterioration, depreciation, etc., to the citrus fruit business. What are you getting all that mileage for? You have got about a million dollars of mileage for your cars.

Mr. Leeds: If you had our balance sheet—you probably have copies

of them now—I will answer your question by referring you to that balance sheet.

Mr. Call: I know, but what is the foundation of your charge for mileage?

Mr. Leeds: I will answer your question if you will allow me the privilege of doing it. You take that balance sheet and deduct the cost of ice from our expenses, eliminating your amount of revenue received for refrigeration, and the mileage will not support the expenses of the line.

Mr. Call: I could not dispute that, but I was wondering if you would not be willing to charge up some of your deterioration expenses to your mileage—if the compensation for the mileage did not cover that, as well as your refrigeration income.

Mr. Leeds: I have not testified yet that we charged up this expense to refrigeration, by any means.

Mr. Call: You thought about two-thirds of it ought to go to citrus fruits?

Mr. Leeds: No sir; less than one-third. In fact, it was two-

178 thirds of one-third, wasn't it?

Mr. Call: All right, that is all.

Commissioner Prouty: What do you estimate the cost of pre-cooling would be if you could operate your plant at San Bernardino as you intended to?

Mr. Leeds: I have not made any estimate. I do not think we have reached a point where we can give you reliable and trustworthy information on that point. I would rather not make an estimate on that now. We think we can do it cheaply.

Commissioner Prouty: Have you any opinion as to whether it would be for your interest to pre-cool and then ice the car, or to ice it without pre-cooling?

Mr. Leeds: It is my opinion it will cost us just a little more to pre-cool that car and refrigerate it to destination than standard refrigeration is costing us today.

Commissioner Prouty: How many tons of ice do you put into a car at the initial icing at San Bernardino?

Mr. Leeds: The bunkers of our cars vary somewhat, but the old standard car is what we have always talked about, and it is the basis upon which these gentlemen are talking here about their pre-cooling business, we get about 9,000 pounds. They put 12,614 pounds.

179 Commissioner Prouty: You put in about 5 tons?

Mr. Leeds: Yes sir.

Commissioner Prouty: Now, if it be true, as Mr. Secrist estimates, that the cost of pre-cooling that car will be about the same as 2 tons of ice, that would make a total cost of about 7 tons of ice at San Bernardino for pre-cooling and pre-icing?

Mr. Leeds: Well, I don't know whether I am going to accept Mr. Secrist's estimation.

Commissioner Prouty: I am not asking you to accept Mr. Secrist's estimation, but if that be true.

Mr. Leeds: Oh, if that were true, yes sir.

Commissioner Prouty: And at $2.50 that would be about $17.50, add $10 for the use of the refrigerator car, and you have a charge of perhaps $20 a car. Now, is there any reason except the legal reason suggested by Mr. Durbrow, why your company would not be willing to offer a rate to the shipper to pre-cool and pre-ice and seal at San Bernardino and send through?

Mr. Leeds: My reasons against that are entirely commercial.

Commissioner Prouty: I would rather have your commercial reasons than the legal reasons.

Mr. Leeds: I gave those on my last testimony.

Commissioner Prouty: The reasons you gave on your last
180 testimony, as I remember them, are, that you could not enter into any competition with the shippers.

Mr. Leeds: No, I think we can beat them to death.

Commissioner Prouty: Now then, if it turns out to be true that you can pre-cool and pre-ice that car and send it through to destination without any further icing, why ought not the shipper to have the right to insist on that being done if he wants it? Why should you compel him to expend $30 for icing which he don't want and don't use?

Mr. Leeds: We are not charging him $30 for ice. I don't admit it.

Commissioner Prouty: Suppose you are charging him $10.

Mr. Leeds: I don't admit that the cost of refrigeration is the cost of ice.

Commissioner Prouty: I understand; you say by your statement here that two-thirds of the cost of refrigeration is the cost of ice.

Mr. Leeds: That is too much. That cost is too much.

Commissioner Prouty: You think that cost is too much?

Mr. Leeds: Yes sir; refrigeration is not paying its share of our expenses today.

Commissioner Prouty: What part of the total cost of re-
181 frigeration ought the cost of ice to be?

Mr. Leeds: I testified once that it used up about 64 per cent. Now, to gradually come down from that to the figures which you state, by reason of various things that have happened—one of them is the increased minimum carload.

Commissioner Prouty: Now, just restate very briefly your reasons, because I do not think I quite remember what you said, the commercial reasons why, if you transacted all the business, you could not with propriety say to the shipper, you may specify that your car shall be pre-cooled and pre-iced and sealed and sent through without any further icing.

Mr. Leeds: There is a good deal dependent, if you please, upon the basis of your calculation as to what you have got to do. Your preparation to take care of the whole business. Your organization to take care of the whole business, and you don't want any interference on the part of somebody else, with half a dozen other of

those things to do; and that is what you will run against the moment you begin to farm out your business to the shipper.

Commissioner Prouty: You don't farm out your business to the shipper; you simply allow the shipper to say what he wants.

Mr. Leeds: I claim you do farm out your business to the
182 shipper, because you are allowing him to encroach upon that which the law says you must do.

Commissioner Prouty: Well, the law doesn't say that you must keep oranges at a temperature of 44 to 40 degrees.

Mr. Leeds: It don't give us any temperature.

Commissioner Prouty: Then do you claim that you ought to fix a rate which will permit you, properly used, to carry those oranges to destination and let you ice as much as you want to? If we are satisfied to have them initially iced and carried through to destination, why should not we say you should make a rate on the basis of the original icing?

Mr. Leeds: I have been in the business long enough in my opinion to have some value, and I don't think you can do it.

Commissioner Prouty: Why don't you think we can do it?

Mr. Leeds: Because he has not done it.

Commissioner Prouty: He has done it.

Mr. Leeds: He has not done it covering a season's business, no sir. And furthermore, he has never handled business enough to know how much it costs him, and he don't know.

Commissioner Prouty: That may be. You would object for commercial reasons, you say, to making that kind of a rate?

Mr. Leeds: Yes, I think I would do it in that case.

Commissioner Prouty: You do do it in that case?

183 Mr. Leeds: No, we do not.

Commissioner Prouty: Why not?

Mr. Leeds: Because we are not furnishing the refrigeration.

Commissioner Prouty: Yes, you are furnishing all the refrigeration the shipper asks for.

Mr. Leeds: He is furnishing his ice.

Commissioner Prouty: Oh, no, he don't furnish anything at all. You don't understand my question.

Mr. Leeds: Then I may be wrong.

Commissioner Prouty: My question is this, suppose you take a car of oranges to San Bernardino, pre-cool it in your blast, fill it up with ice, and seal it, and send it through to destination.

Mr. Leeds: Oh, I will do that every day in the year.

Commissioner Prouty: If the shipper wants that you are willing to do it?

Mr. Leeds: Yes sir. There is no question as to our doing that. But when he signs a release of that kind I don't know whether he is releasing anything, whether the release is any good or not.

Commissioner Prouty: Now, how much is it worth to do that?

Mr. Call: We want it pre-cooled, though, before we release
184 it.

Commissioner Prouty: I am not talking about the details.

Mr. Leeds: It is worth its value to the shipper.

Commissioner Prouty: Well now, Mr. Leeds, the shipper has got to have some refrigeration service.

Mr. Leeds: Yes sir.

Commissioner Prouty: And its value to him apparently is what it costs him.

Mr. Leeds: We have undertaken to do it at cost ourselves, and we think we are down below it.

Commissioner Prouty: It would not cost you as much to do that as it does to ice at half a dozen stations all the way through?

Mr. Leeds: No, and the service would not be as good. I do not think it would be a practical way to handle it; I don't believe in it.

Commissioner Prouty: Then you have no opinion as to what the rate ought to be as compared with the present rate?

Mr. Leeds: I would not like to make one.

Mr. Durbrow: Your Honor is aware of the fact, that we have had a $55 rate for pre-cooling without icing in transit.

Commissioner Prouty: No sir; I was not aware of that.

185 Mr. Durbrow: I thought your Honor had forgotten that, but that rate is in effect *doay*, and was published for experimental purposes, but we have still continued it in effect, and it is in effect *doay*.

Commissioner Prouty: So that a man would save on shipments to Chicago $7.50?

Mr. Durbrow: Yes; that is, to certain points. He would save more than that if he went farther east.

Mr. Call: You have provided in there "providing a release is given". You put that in without having the previous opinion of the Supreme Court.

Mr. Durbrow: No sir. They published that without having the previous advice from the law department.

Commissioner Prouty: Then you are willing to make that kind of an arrangement?

Mr. Durbrow: No sir. If this question had been submitted to the law department we would have advised these people to have taken that rate out, because we do not think the release is worth the paper it is written on, and it certainly is not in this state, according to the Supreme Court here in Donnell case, in 151 California.

Mr. Camp: There were certain statements here which were

186 mentioned, and perhaps they should be offered.

Mr. Leeds: Excuse me, there are two packages about that size, and about as large as that, of the same character as that, and this is an abstract of it.

Mr. Camp: These are the statements showing the amount of ice furnished in transit to different points, for the months of April, May June, and July, 1910.

Mr. Leeds: Yes.

Mr. Camp: These are for various destinations. Have you more than one copy of this?

Mr. Leeds: Oh yes, I have copies for everybody. They are not

here, they are over at the office, but I can deliver them to the counsel for the prosecution.

Mr. Camp: These are not all of them destinations to which the $62.50 rate applies, but the destinations show, being stated at the top of each page.

Commissioner Prouty: I think that is exactly what we want.

Mr. Camp: I will offer them in evidence.

Mr. Leeds: Let me bring over tomorrow morning at this hearing a better copy. Now, these are the same character of report as you examined from the Southern Pacific. I think the blank is practically identical. I also have a statement of pre-cooled and
187 pre-iced cars covered in the same way, with a recapitulation of it.

Commissioner Prouty: You had probably better file this; if you have another copy, you can give it to Mr. Call.

Mr. Leeds: Oh, I will leave this until I substitute the others.

Commissioner Prouty: You just file with the Commission one copy, and give another copy to Mr. Call.

Mr. Leeds: Very well; I will do that.

Mr. Camp: These will be left for inspection for two weeks, the same as the others.

Mr. Leeds: We can leave them permanently, as far as that is concerned. I have got my office file, and one copy each for everybody.

Commissioner Prouty: Is there anything more of Mr. Leeds?

Mr. Camp: No more.

Commissioner Prouty: Have you anything more, Mr. Call?

Mr. Call: No sir.

Commissioner Prouty: That is all, Mr. Leeds.

188 R. L. THOMPSON, called as a witness, being first duly sworn, testified as follows:

Direct examination:

Mr. Matthews: Mr. Thompson, what is your occupation?

Mr. Thompson: Manager of the Highlands Exchange Association, at Highlands.

Mr. Matthews: Were you stationed at the Colton pre-cooling plant of the Pacific Fruit Express at any time during this season?

Mr. Thompson: Yes sir.

Mr. Matthews: How long were you there?

Mr. Thompson: I was there during about two weeks in May and the last week in June.

Mr. Matthews: Did you observe the method of pre-cooling the cars and pre-icing them?

Mr. Thompson: Yes sir.

Mr. Matthews: By the Pacific Fruit Express?

Mr. Thompson: Yes.

Mr. Matthews: Will you please state what you observed with reference to the conduct of these matters?

189 Mr. Thompson: They had their rows of fruit, the boxes numbered, and put thermometers in different boxes on the outside orange, the orange either in the bottom of the box or the top of the box. When I first went there I told them the first thing, I asked them to pull out the boxes and open them up and take the temperature of the inside oranges.

Mr. Matthews: Was the box opened up?

Mr. Thompson: Yes sir; the box was opened up.

Mr. Matthews: Was that box in a car that was pre-cooled?

Mr. Thompson: Yes sir.

Mr. Matthews: What was the temperature of the inside oranges?

Mr. Thompson: The inside oranges would run 60 and 65.

Mr. Matthews: That is all.

Mr. Durbrow: That is all.

190 Francis Q. Story, recalled as a witness.

Direct examination:

Mr. Call: You are the president of the California Fruit Growers Exchange?

Mr. Story: I am.

Mr. Call: How long have you been connected with the Exchange?

Mr. Story: Oh, almost from the very beginning.

Mr. Call: You are president of the Citrus Fruit League?

Mr. Story: I am.

Mr. Call: You are pretty well acquainted with the fruit business in California?

Mr. Story: I am with the citrus fruit business.

Mr. Call: Now, the way these orchards and packing houses are situated, would it be better for the business for the railroads to do this work of refrigeration, if they could do it as well and as economically as the shippers can do it themselves?

Mr. Story: Undoubtedly they would be very glad to have the railroads do it under those conditions, perhaps with the exception of the two that have already put in their icing plants or
191 pre-cooling plants.

Mr. Call: Do you think there would be any disposition on the part of the shippers to put in their own plants, if the railroads would do it at the right price and in the right way?

Mr. Story: I do not believe one in a hundred would do it.

Mr. Call: Or in any effective way, at the right price?

Mr. Story: No sir.

Mr. Call: So that the extent to which the shippers might avail themselves of the pre-cooling and pre-icing privilege, if it was given to them to the extent to which they would avail themselves of it, would then depend altogether upon what the railroads would do and the price at which they would do it?

Mr. Story: Depending altogether on how quickly they got the fruit from the packing houses into these plants. Take a strong year, when the fruit is strong, that would not be so important. But during the years when the fruit was weak, it would be of very

great importance. The length of time it would take to get it into the packing houses would decide that.

192 Mr. Call: The time that they usually require for getting into San Bernardino into the plant, in a few hours, or part of a day, while theoretically it might be a little detriment, practically they would prefer to have them do it, wouldn't they?

Mr. Story: Ordinarily, yes sir.

Mr. Call: So that it would resolve itself, in your estimation, into what could be done by the roads and the price that they ask for it?

Mr. Story: I think so. I would say, from my experience as president of the Alhambra Orange Growers' Association, we put quite a number of cars into cold storage largely for the purpose of pre-cooling, partly owing to market conditions. So far as the difference in decay goes, this season, between that way of doing the business and the regular refrigerating, I cannot see that there has been put little if any difference in the prices received between the two. When they get it through ordinarily on the regular refrigeration, our fruit is good, without decay.

Mr. Call: That is all.

Commissioner Prouty: Is it the general impression of orange growers that oranges can be pre-cooled and pre-iced and come through without any other icing?

193 Mr. Story: If it is done correctly and with a good car, I think without any question.

Commissioner Prouty: That can be done, you think, as the East Highland plant does it and as the Pomona plant does it?

Mr. Story: Yes sir. Of course that is always provided they go somewhere near schedule time. If they take more than three days out on the desert laying still on the tracks, I think it would require a better car than they have at present to stand those conditions. But with good cars, on schedule time, they would go through perfectly.

Commissioner Prouty: Suppose the orange growers had the right to pre-cool and pre-ice for the payment of say $15 a car, or without the payment of anything, we will say, and the railroads still would get the present schedule for icing or for pre-cooling and icing, what part of the oranges would finally be pre-cooled as they are now pre-cooled at Pomona and East Highland?

Mr. Story: I do not know what the present schedule is for pre-cooling and pre-icing.

Commissioner Prouty: The price charged now is, I believe, $30 a car, where the shipper pre-cools and pre-ices. Where the railroad pre-cools and pre-ices, $55 a car is charged. Now at

194 those rates and the present refrigeration rates, where there is no pre-cooling, or rather where the car is iced to destination, what part of the oranges would be pre-cooled and pre-iced as they are now pre-cooled and pre-iced at Pomona?

Mr. Story: That would be pretty hard to say.

Commissioner Prouty: You would not have any opinion about that?

Mr. Story: No sir.

Mr. Durbrow: Do you think, Mr. Story, that it would be safe for the carriers to withdraw from the business of refrigerating in transit, and permit shipments to go through with the pre-icing and pre-cooling?

Mr. Story: I think it would be perfectly safe when the carriers feel that they can carry this fruit through to delivery on schedule time; otherwise, not.

Mr. Durbrow: Well, of course the records in evidence in this case show that we are making very excellent time, and you people have even conceded that the service was ordinarily satisfactory. Now, if that be so as a general proposition, you would necessarily have to forego this right or privilege of diversion if you wanted the cars carried through on schedule time.

Mr. Story: When I say schedule time, I mean schedule
195 time between your various stations as it is given in your schedules; not stopping between San Barnardino and Colton two or three days, and at another point two or three days. I don't refer to that.

Mr. Durbrow: I want to ask you in that connection whether shipments suffer deterioration when the car is standing still to a greater or less extent than they do when the car is in motion?

Mr. Story: Well, that I could not say positively, but my experience has been that when the car has been kept out on the desert for three or four days we anticipate trouble, and usually get it.

Mr. Durbrow: That is all very well, but can you answer the question I put to you?

Mr. Story: I have made that statement, and I have given you the reason why I made that statement.

Mr. Durbrow: You don't know then, as a matter of fact, whether the fruit suffers greater deterioration when the car is standing still or when it is in motion?

Mr. Story: When it is in motion under refrigeration, the car is better in motion.

Mr. Durbrow: That is what I thought, and that is what my experience has shown also. If that be a fact, and the
196 carriers are making schedule time, and the shipment is not delayed between stations, but is kept right up to schedule time, that fruit, according to your testimony, would not suffer the same deterioration as though it had been stopped at a particular point, say Omaha, in hot weather, and allowed to stand at that point, would it?

Mr. Story: If it stands at that point under refrigeration, standing still, I think it would keep better perhaps standing still under refrigeration. But under ventilation I think it would keep better in motion.

Mr. Durbrow: That is not the question really. Let me ask you this: Is there any great difference in the deterioration when the car is in motion and when it is standing still?

Mr. Story: When it is in motion under refrigeration, I think it keeps better.

Mr. Durbrow: Under refrigeration?

Mr. Story: No sir; when it is in motion under ventilation.

Mr. Durbrow: I am not asking you about ventilation—you can eliminate that entirely. But when a car is moving forward under refrigeration, is there more or less, or is there any difference in the deterioration, whether the car be standing still or be in motion?

Mr. Story: If the temperature is the same inside, there is no difference.

197 Mr. Durbrow: We will assume there is no difference, then, and the car moves forward from San Bernardino or from Colton over the line of the Southern Pacific Company—because we want to advertise that—and the car moves forward, and it lags behind on its schedule; according to your testimony there is no difference in the deterioration, the extent of the deterioration, than if the car was standing still at Omaha? We will assume the temperature is the same at both places.

198 Mr. Story: No sir; only the question of the time it takes.

Mr. Durbrow: I am not asking about the time; I am asking would the fact that the car moves slowly over the road of the Southern Pacific, instead of standing at Omaha, would there be the same or any difference in the deterioration of the fruit?

Mr. Story: The atmosphere in the car being the same?

Mr. Durbrow: Everything being the same.

Mr. Story: The temperature of the car being the same, I think it makes no difference. I think it don't make any difference. I think it does make a difference if the temperature is different, the temperature of the moving car.

Mr. Durbrow: We will concede that to be an established fact in this case. Now, if it be true that the fruit does not suffer any greater deterioration in motion than when it is standing still, all the conditions being the same, and you say that it is imperative that the carrier shall make the schedule time in order that these shipments shall move forward promptly to destination, does it not follow absolutely, by inexorable logic, that if you hold those cars at different points en route for diversion, or for disposition, that the contents of those cars, because it has required a greater amount of time in transit, would suffer deterioration just the same as though the car had

199 been delayed by the fact that the carrier had not made the time specified in the schedule?

Mr. Story: I think I can put that in much fewer words than that.

Mr. Durbrow: I wish you would.

Mr. Story: If I understand you correctly.

Mr. Durbrow: I wish you would.

Mr. Story: When I said, that it ought to go through on schedule time, I mean that the road ought to be responsible for a certain number of days, for its arrival at destination. But if the shipper took a week or ten days to have it lay at different points, it would be

at the shipper's responsibility. That is what I am talking about; I am talking about that one thing.

Mr. Durbrow: I am talking about one thing also, and I am entitled to an answer to my question. I will try to make my question plain.

Mr. Story: Maybe I don't get the question.

Commissioner Prouty: Let Mr. Durbrow ask the question again.

Mr. Durbrow: Mr. Story, you say that a shipment pre-cooled and pre-iced, moving forward from Los Angeles to the east,
200 to these different eastern destinations, will move forward to destination in perfect condition if the carrier maintains schedule time.

Mr. Story: I said I believed they would move forward without delay.

Mr. Durbrow: Does it make any difference in the amount of decay whether that delay is caused by the carrier or by the shipper?

Mr. Story: No sir; I don't know as it does.

Mr. Durbrow: It does not? Then does it not necessarily follow, in order to get back to the first question, which I will thank you to answer directly—does it not follow that if you cannot pre-cool and pre-ice those shipments in such a manner that they cannot arrive at destination unless they move on the schedule without diversion, that you people must forego the privilege of the diversion of those cars or holding them *in* en route for disposition?

Mr. Story: It follows that they must be disposed of in a certain number of days or they will require re-icing.

Mr. Durbrow: Thank you.

Mr. Story: Unless they are disposed of in a certain number of days. I thought I made that plain in the beginning; I sup-
201 posed I had.

Mr. Durbrow: It would follow then, naturally, Mr. Story, that if we are going to permit the diversion privilege and the privilege of holding a car en route for disposition, that we must continue to maintain these icing plants en route?

Mr. Story: Oh no, we will do as we have done—we will take our chances on it. We will have to take our chances in sending them forward in all these cases.

Mr. Camp: The experiments which have been made with pre-cooled and pre-iced cars sent through to destination without re-icing, have been for the most part made on cars with strong fruit, good keeping qualities?

Mr. Story: All the fruit this season we call strong fruit unless it has been picked up. But I believe last year the experiments would be along the same line.

Mr. Camp: Have you any idea as to the safety of allowing the temperature to rise in the case of weak fruit? Do you think it would be safe to allow weak fruit to be carried in the same manner in which you have been carrying strong fruit?

Mr. Story: With the pre-icing?

Mr. Camp: Yes.

Mr. Story: Well, it would be certainly safe for a shorter length of

time in all probability, but I do not think I consider myself
202 capable of giving an expert opinion, and I do not wish to do it. I would prefer some of those people who have made the experiments to answer that question.

Mr. Camp: That matter has got to be considered, however?

Mr. Story: Yes sir.

Mr. Camp: You cannot tell when we are going to have a season of weak fruit, can you?

Mr. Story: Any season, we will say for the last three or four years, since we have had Mr. Powell to assist the growers, the last three years especially,—there had been previous to that a great deal of trouble with decay, but during the last three years we have had practically no decay whatsoever, owing largely to their being put about the first of March and February under refrigeration, and I don't remember in the last three years more than one or two cars on which any claim was made for decay, showing that the ventilation was satisfactorily done.

Commissioner Prouty: Is there any more testimony?

Mr. Matthews: I do not think so, your Honor, unless you desire more testimony on the method of estimating the icing.

Commissioner Prouty: No, I don't think so.

Mr. Call: We would like the privilege some time during the hearing of referring to the different tariffs, the west-bound, espe-
203 cially those which contain the privilege of pre-cooling and pre-icing different products, such as eggs, butter, meats, beer, etc.

Commissioner Prouty: I understand those tariffs are all public property. Mr. Call, do you desire to prepare another brief on this question of the icing? It seems to me it would be well for you to do so on both sides.

Mr. Call: We think we would like to do that. We didn't argue it except very generally before.

Commissioner Prouty: Can you prepare that brief for filing by the first of October?

Mr. Call: Yes sir.

Commissioner Prouty: How long will it take you, Mr. Durbrow, and Mr. Camp to prepare your answer?

Mr. Durbrow: There are a large number of cases set for October, your Honor, before the Interstate Commerce Commission. Outside of that, I can prepare my brief—I would like fifteen days.

Commissioner Prouty: We will give the Complainants until the first of October to prepare and file brief. I think perhaps if they make service on your gentlemen on the Pacific Coast here that might be sufficient. They shall have until the first of October to prepare and serve their brief. You may have fifteen days on the
204 part of the defense to prepare and serve your reply.

Mr. Durbrow: In view of these many cases coming on, I ask for twenty days.

Commissioner Prouty: Yes, I think you may have twenty days.

Mr. Durbrow: I will endeavor to have my brief filed earlier than

that. When would you gentlemen like to argue this question before the Commission in Washington?

Mr. Matthews: Some time in the latter part of October.

Commissioner Prouty: I don't know what our rule will be this year. The amount of work which is piling up on the Commission is very much greater now than it was a year ago. Our rule last year was that we heard arguments the first two weeks in the month, meeting during the last two weeks in the month. I am not sure whether that rule is in force this year, that we hear argument the first two weeks, which in this case would be the first two weeks in November. Your shipments do not begin to move under refrigeration here until March, so that if this case is argued in November there will be plenty of time to dispose of it before you will have any occasion to use the refrigeration tariff for next year.

205 Will that suit you, Mr. Durbrow?

Mr. Durbrow: That is satisfactory, your Honor. I would like it, if there are any other cases we have to argue, if they can arrange so that they can be argued during the same hearing.

Commissioner Prouty: We will see that that is done, Mr. Durbrow.

Mr. Durbrow: Now, before concluding, we would like to ask you now, in the light of what has been done here by the Santa Fe, exactly what showing you would like to have us make on behalf of the Pacific Fruit Express. I understand your Honor indicated a desire to have us furnish a statement, drawn off from these statements that we have already filed, a statement to be filed later, wherein the shipments for the last week in April, May and June, would be segregated, and the shipments going to the Missouri River.

Commissioner Prouty: You may show April, May, June, July, and August. The Commission has July, although it has not been able to make the compilation. You have May, June and July.

Mr. Durbrow: We have May, June, July, and August. We can put in the last week in April.

Commissioner Prouty: Take the last week in April, last week in May, last week in June, last week in July, showing the amount of ice required in the case of shipments to the Missouri River, including icing at the Missouri River.

206 Mr. Durbrow: Very well. May we include August also?

Commissioner Prouty: Yes sir; you can include August.

Mr. Durbrow: We would like to do that.

Commissioner Prouty: Very well.

Mr. Durbrow: Was there something else your Honor desired?

Commissioner Prouty: I suggested this, that you show the quantity of ice required to carry these cars to destinations taking a certain rate. Chicago and the Missouri River take a rate of $62.50; New York takes a rate of $75. Now, I suggested that you take those statements and pick out the cars which went to territory taking the $62.50 rate, and showing how much ice was required to carry those cars to destination; and the same with regard to the $75 rate. That can be done, can't it?

Mr. Durbrow: Yes sir; Mr. Secrist says that can be done. And for the same period, I suppose?

Commissioner Prouty: For the same period.

Mr. Camp: Mr. Leeds calls my attention to the fact that the Missouri River rate is $60. The Chicago rate is $62.50.

Commissioner Prouty: Is there any further suggestions to be made by anybody? If there is no further suggestions the case will stand adjourned.

a

Interstate Commerce Commission,
Washington.

United States Commerce Court. Filed Apr. 15, 1912. G. F. Snyder, Clerk.

I, John H. Marble, Secretary of the Interstate Commerce Commission, do hereby certify that the paper hereto attached is a true copy of the original transcript of the stenographer's notes of that portion of the oral argument taken before said Commission on December 8 and 9, 1910, at Washington, D. C., in the case of Arlington Heights Fruit Exchange and others against Southern Pacific Company and others, docket No. 3000, the original of which is now on file and of record in the office of this Commission.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this 15th day of April, 1912.

[Seal Interstate Commerce Commission, 1887.]

JOHN H. MARBLE,
Secretary.

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207 Before the Interstate Commerce Commission.

No. 3000.

ARLINGTON HEIGHTS FRUIT EXCHANGE et al.
vs.
SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, et al.

WASHINGTON, D. C., THURSDAY, *December* 8, 1910—
2:00 o'clock p. m.

Present: Commissioners Clements, Prouty, Cockrell, Lane and Clark.

Appearances:

Mr. Levy Mayer, Mr. F. E. Matthews, and Mr. A. F. Call, for the complainants.

Mr. T. J. Norton, representing the Santa Fe System companies.

Mr. C. W. Durbrow and Mr. F. C. Dillard, representing the Southern Pacific Company, Union Pacific Railroad Company, and others.

208 *Proceedings.*

Commissioner Clements: Gentlemen, we will take up now docket No. 3000, Arlington Heights Fruit Exchange and others, complainants, vs. Southern Pacific Company, and others, defendants.

Who appears for the complainants in this case?

Mr. Mayer: Mr. Call, Mr. Matthews and myself for the complainants.

Commissioner Clements: Who appears for the defendants?

Mr. Norton: T. J. Norton for the Santa Fe and Mr. Durbrow for the Southern Pacific.

Mr. Durbrow: And I appear for many of the other lines named in the brief.

Mr. Norton: I appear also for a number of others.

Commissioner Clements: Can this case be presented within three-quarters of an hour on each side, gentlemen?

Mr. Norton: No, your Honor, I do not think so.

Commissioner Clements: What time do you think you should have?

Mr. Durbrow: During the course of the hearing, if your Honor please, there were several propositions of law that were raised, and Mr. Commissioner Prouty indicated a desire to have those
209 questions argued somewhat fully, and we are very anxious to present them fully to the Commission. Your Honors will find that not only the question of the reasonableness of rates is concerned, but also the question with reference to the right of the shipper to perform any part of the refrigerator service. So far as the carriers are concerned, we would like to have just as much time as

the Commission feel they can consistently allow. We would like to present a full argument on those propositions, and also as to the reasonableness of the rates.

Mr. Mayer: I do not think an oral argument will be very helpful to the Commission unless we have a fairly liberal allowance of time. I am satisfied three-quarters of an hour would not acquaint the Commission with the situation.

Commissioner Clements (After a conference with other members): Gentlemen, you can get along with an hour and a quarter on each side, we think. That will take the greater part of the afternoon.

Mr. Mayer: It is going to be my effort, if possible, so that the Commission need not go through the very voluminous briefs and records in this case, to cover this matter carefully and fully in my argument, and the more my time is curtailed the more time
210 will be taken of the Commission in handling the original documents. I have an idea I could, in my argument, sum up for the benefit of the Commission the argument pro and con on the propositions involved, but I doubt whether I can get through in much less than an hour and a half, although anticipating that my time will be greatly curtailed, I have reduced to writing to some extent what I want to say.

Commissioner Clements (After further consultation): We will undertake to give you an hour and a half on each side. That will take the entire afternoon.

You may proceed, Mr. Mayer, each side dividing the time among counsel as they may desire.

Argument of Mr. Levy Mayer on Behalf of the Complainants.

Mr. Mayer: If the Commission please, as I have just indicated, in order to rush through the discussion, on account of other engagements, I have done what I rarely do—that is, I have been compelled to dictate a summary, and I think in that way I can get before the Commission the contentions of both sides with a
211 greater degree of accuracy, and I think probably it will not be necessary for the Commission to read all of the printed briefs. There are some 460 pages of printed matter, exclusive of the record, in the case. I have endeavored to boil down with as much fairness as a lawyer on one side can do, the arguments in support of our contention and the answer to those arguments, so far as they have been developed in the briefs filed by counsel for the carriers. If, therefore, I shall read any portion of my argument, more than I am in the habit of doing, it will be because I think I can expedite the discussion and more accurately bring the record to your Honors' attention, particularly as I was not present at the time of the taking of the testimony. I have had to rely upon the record and upon the very valuable assistance of one of my juniors who was there, Mr. F. E. Matthews.

The petitioners are 131 individuals and associations, all growers of citrus fruit, having a total membership of over 10,000 growers,

representing over 90 per cent of all the orange and lemon growers of California.

There are two issues. First is the issue as to the reasonableness of defendants' general refrigeration charges for the refrigeration of citrus fruit from California to various parts of the country.

212 The other issue relates to an arbitrary charge of thirty dollars per car assessed against cars of citrus fruit pre-cooled and pre-iced by the shipper and moving under instructions, "Do not re-ice in transit." In such cases, as we shall point out, no service is required by the shipper or rendered by the carrier. The shipper's method of pre-cooling, consists of reducing the temperature of the fruit prior to the shipment to from 33 degrees to 35 degrees, at a pre-cooling plant operated in connection with the shipper's packing house.

The pre-icing consists of filling the bunkers of the car at the packing house with solid blocks of ice and while the car is in the possession of the shipper, or grower, and not in the possession of the carrier.

The fruits of California are marketed principally east of the Rocky Mountains and, as the Commission is aware, these fruits must pass across more than one thousand miles of desert where, during the greater part of the time, the temperature is high and the atmosphere very dry. For a number of years the shippers have protected their fruit against these conditions by icing the cars both initially and in transit. This service has been performed for the carriers by various private car lines. It is now performed for the Santa

213 Fe by an auxiliary corporation known as the Santa Fe Refrigerator Despatch Company, and for the Harriman line is performed by the Pacific Fruit Express, the stock of both the Despatch and Express companies being owned in toto by the railroad companies.

Citrus fruit cars are not initially iced until they reach San Bernardino or Colton, where the orange trains are made up, so that the oranges do not come under the influence of refrigeration until from twenty-four to thirty-six hours after they are picked from the trees. When the weather is warm in California, the temperature of the fruit as it comes from the trees is as high as 130 degrees.

Commissioner Cockrell: How many degrees?

Mr. Mayer: 130 degrees. It runs from 90 degrees to 130 degrees.

Experiments have demonstrated that this hot fruit was not reduced by refrigeration to the ordinary carrying temperature of 50 degrees until it had been carried nearly half-way across the continent. For this and other reasons, a large amount of decay developed in the fruit. This led to an investigation by the Department of Agriculture, under the direction of Mr. G. Harold Powell, the chief pomologist of the Department of Agriculture. Mr. Powell made a careful and exhaustive investigation as to the cause of this

214 decay, and in March of 1908 a report was made by him of the result of his investigation. That report is a part of the

record in this case, and extracts from it appear not infrequently throughout the printed briefs.

I wish to read a paragraph from Mr. Powell's report, found on page 51 and also on page 53 thereof. He says, on page 51 of his report—and I read only a line—as follows:

"It is equally clear that it is essential to ship the fruit promptly after packing or to cool it quickly, if it is to be cooled before shipment."

Again on page 53 of his report, he says:

"The use of icing or of pre-cooling as a means of overcoming losses that the grower and shipper cannot prevent in the ordinary course of business is commendable and is essential in the handling of most of the orange crop of California in warm weather."

The report of Mr. Powell is a conclusive argument showing the necessity and advantages of the pre-cooling system. It is an interesting coincidence that at about the time Mr. Powell was making his report this Commission in the Peach Growers' case from Georgia anticipated or suggested pre-cooling as a means of preventing decay.

215 The investigation of Mr. Powell in the Department of Agriculture led to the erection by the growers of three pre-cooling plants, one at East Highlands, one at Pomona, and one at Uplands, California. These plants are operated in connection with the packing house, and while the method of pre-cooling at each of the plants varies somewhat, all of them accomplish the result of placing the oranges under the influence of a cold atmosphere as soon as the lid is nailed upon the box. The temperature of the fruit is gradually reduced to about 32 degrees. They do not put it below 32, which is the freezing point, for fear of freezing the fruit. Inasmuch as the oranges are packed tight in the boxes, this operation takes about forty-eight hours. The evidence shows that most of this time is consumed in reducing the temperature from 45 degrees to 35 degrees, and it is this low temperature which accomplishes the result which this argument will further develop. The record also shows that it is necessary to cool the oranges slowly in order to pre-cool to the center of the orange.

The East Highlands pre-cooling plant makes its own ice and refrigeration, while the Pomona plant obtains its ice from a nearby ice plant. The cars are loaded at the pre-cooling plant, and the cars are cooled by running a vestibule between the pre-cooling room and the car.

216 Solid blocks of ice are placed in the bunkers of the car either before or during the process of loading. The evidence shows that this pre-icing by the shipper is inseparably connected with the pre-cooling; otherwise the benefits of pre-cooling are either lost in part or entirely destroyed, because if the fruit is pre-cooled and then not put immediately into a pre-iced car, but is carried from the pre-cooling station to the station where the railroad companies pre-ice the car, or is put into a hot car, the benefit of the pre-cooling is to a very large extent lost, if not entirely eradicated. While the growers have erected these pre-cooling and pre-icing

plants, the Santa Fe Company and the Pacific Fruit Express have each constructed a large pre-cooling plant at the point where the orange trains are made up, at Colton and San Bernardino. The railroad methods and their claims differ essentially, most essentially, from those employed by the shippers. The railroads pre-cool the fruit after it has gotten into the car. It is obvious that if they take forty-eight hours to pre-cool, the congestion of cars would render it impossible. The railroads therefore undertake to perform the service in from two to four hours, while the grower takes from twenty-four to forty-eight hours, because a gradual pre-
217 cooling is necessary, rather than a precipitate or hasty cooling, such as is the method employed by the carriers. As I shall show, the carriers do not pre-cool the fruit to the center of the fruit and do not get it down below 45 degrees temperature.

The carriers do not claim, and the record so shows, that they reduce the temperature of the fruit below 45 degrees, while at the growers' plants the temperature is reduced to 33 degrees, and it is this essential difference in temperature which permits the shippers to forward their shipments to all the markets without the necessity of re-icing in transit. The carriers do not claim that by their methods they can avoid re-icing in transit. In other words, the carriers, pre-cooling at their pre-cooling stations and pre-icing, are compelled to re-ice in transit, while the growers who pre-cool and pre-ice at their plants, do not require re-icing in transit, but on the contrary direct the carriers, as I shall show further on, not to re-ice in transit, and to leave the shippers' cars unopened and alone.

At the growers' plants the oranges are placed under the influence of a cold atmosphere as soon as the lid is nailed on the box, and almost immediately after the oranges leave the trees. With the carriers' system the oranges, after they are packed, must
218 be loaded into a hot car. These cars are not picked up until some time in the evening of the day on which they are loaded. The cars must then be hauled by the carriers to San Bernardino or Colton, an average distance of some fifty or sixty miles, at which point the cars, and then for the first time, are initially iced and made up into trains. Under the carriers' system the boxes are put into the car which is not pre-cooled or pre-iced, and then, after being carried forty or fifty or sixty miles, or whatever the distance may be from the groves to Colton or San Bernardino, and at that point the cars for the first time are pre-iced and the fruit for the first time pre-cooled, while in the case of the growers this all happened right at the packing house on the grove.

The Powell experiments show that the field heat does not leave the fruit for about fifty hours, and until the train has travelled half-way across the continent. The carriers' witnesses, the witnesses produced by the carriers, all of them agree that immediate pre-cooling is advantageous to the fruit and the sooner it comes under the influence of such refrigeration, the better. The carriers, however, argue that inasmuch as under their system the pre-cooling is completed in a shorter period of time, their system is the more

advantageous. The argument is not tenable; the premise
219 upon which it is based is erroneous, as the argument as I advance it will show. The test is and the test always must be, under which system are the oranges first and soonest placed under the influence of refrigeration.

The Pomona plant, with which Mr. Dreher, one of the witnesses, is connected, has a storage capacity of forty-two cars. The East Highlands plant, with which the witness Mr. Edwards is connected, has a storage capacity of twenty-four cars. The Uplands plant, with which the witness Price is connected, has a storage capacity of twelve cars.

The evidence shows that in times of car shortage or delay in furnishing cars, considerable loss was occasioned or has been occasioned to the growers by the fact that the packing houses had no cold storage facilities to take care of the fruit after it had been picked from the trees. This condition is now remedied where shippers possess pre-cooling plants. The defendants have admitted in this record that their, the carriers', system cannot and does not accomplish that result.

By reducing the temperature to 33 degrees, which the growers have done, the growers have avoided icing in transit—that is, from the initial point of shipment to all eastern points, under the growers' system, no icing in transit is necessary, required or desired;
220 and on the contrary the record shows—and I shall further allude to the fact—that the carriers are notified by the shippers not to re-ice in transit, and the carriers are discharged from all liability for not re-icing in transit.

The witness Mr. Thompson, at the last hearing, a witness produced by the growers, testified that he had made tests of the temperatures of the oranges pre-cooled by the carriers, and that the temperature in the middle of the boxes ran from 60 degrees to 65 degrees, showing that the carriers are not obtaining nearly so low a temperature as they pretend to have accomplished. This testimony of Mr. Thompson's has not been refuted or contradicted in any particular. It is also proven by a number of exhibits filed in the record, which show that on the shipments pre-cooled by the carriers, there was but a slight saving of the amount of ice required in transit.

On the Santa Fe, their system of pre-cooling, as shown by their own testimony, saves only about one and one-half tons of ice, and on the Southern Pacific, as shown by their testimony, only about one ton of ice. Mr. Powell, the Government expert, has stated that it takes about forty-eight hours to properly pre-cool, and a number of witnesses have testified to the same effect, and this is supported by the uncontradicted result attained at the plants of the
221 carriers as shown by their own exhibits.

The evidence further shows that in certain seasons the orange crop is weaker in carrying qualities than in other seasons. The orange is then more susceptible to mechanical injury and a considerable portion of the crop is lost. The pre-cooling system of the growers will enable them to save a large portion of a weak crop,

which would otherwise be lost. When a weak crop is coupled with a shortage of cars, the loss is greater. The fact that weak crops occasionally occur shows the necessity of permitting the shipper to have his own pre-cooling facilities.

(The Chairman at this point entered the hearing-room and assumed the chair.)

Under the growers' pre-cooling system there is considerably less decay in transit. The shipments made during the past season show that the East Highlands plant had a perfect record, with no loss resulting from decay. Out of one hundred and twenty-four cars shipped from the East Highlands plant, not one showed decay. Out of the two hundred and seven cars shipped from the Pomona plant, only seven showed decay. There was a greater percentage of decay in the shipments pre-cooled in Los Angeles at an
222 independent icing plant. This condition was due to inexperience and incompetent labor, and the railroad companies have withdrawn the privilege of pre-cooling and pre-icing at Los Angeles since this hearing began, so that the Los Angeles plant is no longer a factor either in this record or in this discussion.

Commissioner Prouty: Do you claim it should be? Do you claim your shippers should have the right to stop these oranges for the purpose of pre-cooling them, as was done at Los Angeles?

Mr. Mayer: I do not, your Honor. I express no opinion on that. I have some doubt as to whether the grower would have the right to ship the car into Los Angeles—I mean unless by paying the local rate—but that is eliminated from the record. As to my opinion which you ask, as a judicial officer I would say that the shipper or grower did not legally enjoy that right.

The record also shows that the buyers of citrus fruits of California always prefer fruit that has been pre-cooled and pre-iced by the growers, and this class of fruit which has been pre-iced and pre-cooled by the growers brings on the average a higher market price than it otherwise would.

There is, however, another element which demonstrates
223 the benefit to the carrier as well as to the grower of the right claimed by the grower to pre-cool and pre-ice his fruit at his own plant. Under the growers' system of pre-cooling, the fruit is loaded in the car in practically a solid mass. This permits the loading of an extra row of boxes, seven rows wide instead of six, or sixty-six additional boxes in a Pacific Fruit Express car, and sixty-four additional boxes in a Santa Fe car. On shipments moving under ordinary refrigeration, or what is known as standard refrigeration, being the refrigeration of the carrier, the cars are loaded only six rows wide, so as to permit the free circulation of the cold air between the boxes. The record establishes that this saving in equipment cannot be availed of under the carriers' pre-cooling system, as it is necessary, as I have said, to leave space between the boxes to pre-cool the fruit in the manner in which the carriers pre-cool it, and this creates a benefit to the carrier averaging a little over fifty dollars a car in increased revenue. I mean that method by which the shipper pre-cools and pre-ices and loads the boxes in tiers

of seven wide as against the system where the carrier pre-cools and pre-ices and the fruit is loaded only six tiers wide, or a difference of a little over fifty dollars in the freight earnings of every
224 car where the shipper pre-cools and pre-ices as against the freight earnings of the car where the carrier pre-cools and pre-ices.

The undisputed evidence in this case shows that it costs the shipper, to pre-cool and pre-ice his cars, about thirty dollars a car. That evidence is not disputed, and no attempt was made to dispute it. In other words, their evidence shows that it costs the shipper about five cents a box for pre-cooling.—I mean where the grower does the pre-cooling; about five cents a box for the pre-cooling, and in addition to the cost of pre-cooling, about ten dollars a car or a little under ten dollars a car for pre-icing, making a total cost to the grower who pre-cools and pre-ices his own car of about thirty dollars per car.

Commissioner Prouty: I think the amount is a little more than thirty dollars.

Mr. Mayer: Thirty to thirty-one.

Commissioner Prouty: It is thirty-two or thirty-three.

Mr. Mayer: I think there was one witness who testified to twenty-eight or twenty-nine, and I have averaged it at about thirty dollars. I will take it, however, at thirty-two dollars a car, which is the maximum. In other words, the shipper or grower who pre-cools and pre-ices his car, does so at an expense, a maximum ex-
225 pense, of not to exceed thirty-two dollars,—Mr. Commissioner Prouty will agree that was the maximum—while the refrigeration charge of the carriers is to Chicago $62.50 and to New York $75 and to Boston $77.50, for the same service, as the argument will further show.

The minimum charge for pre-cooling and pre-icing by the carrier, as shown by the carrier's tariff on file, is $55, but those tariffs contain a provision that if the car is iced in transit, the $55 charge will be canceled and the regular refrigeration charge to destination applied. In other words, the tariff provides that the carrier will charge for refrigeration $75 where it is pre-iced and pre-cooled by the carrier, but not pre-iced in transit; but if the carrier does re-ice in transit, then the regular refrigeration charge of $62.50, $75, and $77.50 is applied. And yet in no case, with the exception of one or two cars, has the carrier ever transported, pre-cooled and pre-iced fruit—I mean pre-cooled and pre-iced by the carrier—to destination.

Commissioner Prouty: Does not this record show that last season the Southern Pacific Company did send some forty or fifty cars in that way?

Mr. Durbrow: It does, and it is disclosed by the supple-
226 mental record which we introduced at the hearing.

Commissioner Prouty: Eighteen or nineteen cars, I remember.

Mr. Durbrow: Your Honor knows the reason why more were not sent in that same manner.

Commissioner Prouty: I believe the shippers did not permit it.

Mr. Durbrow: They refused to permit us to perform the service in that particular.

Mr. Mayer: What do you mean by that?

Mr. Durbrow: Mr. Call advised the representatives of this Association that the carriers should not be allowed to pre-cool and pre-ice shipments and send them forward to destination.

Commissioner Prouty: The carriers declined to guarantee the safe movement by their method, and Mr. Call advised his clients, I think, that they could not safely assume the responsibility of the shipments going through.

Mr. Call: And that only applies to Mr. Call's clients, too.

Mr. Mayer: To repeat, your Honors, the minimum charge for pre-cooling and pre-icing by the carriers is $55, with a provision that if the car is iced in transit by the carrier the $55 will
227 be canceled and the regular refrigeration charge to destination applied, and as the carriers do not claim that they can avoid icing in transit,—they insist that they must ice in transit—this means the pre-cooling charge on their part is the regular refrigeration charge, which is $62.50 to Chicago, $75 to New York, and $77.50 to Boston.

The grower should be permitted to handle his fruit in the cheapest and most economical way, and even the defendants, the carriers' witnesses, have admitted that the cheapest method ought to prevail. The growers' system lessens the cost of production while improving the condition of the fruit, as well as the appearance of the fruit, which is a great benefit to both the grower and the consumer, and, as Commissioners Prouty and Lane know, where the fruit is at all injured physically, it preserves the fruit against decay. Only those Commissioners who have looked into the industry personally will understand that in the handling of fruit, the labor is not skilled, and the fruit suffers bruises and contusions and other physical defects from which a decay, a speedy decay, will result unless it is avoided as it is by the pre-cooling and refrigeration.

Their expert, Mr. C. M. Gay, testified—I read from page
228 786 of the record—as follows:

"I do not think it possible to pre-cool and pre-ice and get fruit through to Chicago in the condition that it should be without icing in transit. It would not be a safe proposition."

Another witness, Mr. A. M. Mortensen, testified—and I read now from page 1051 of the record—as follows:

"With the large plant we find that so far as we are able to determine now, that the saving in ice en route practically offsets the cost of pre-cooling."

And on page 1053 of the record he said:

"Our experience so far has been that there is not a very great saving in ice. Therefore there is not much difference in the cost."

They are speaking of the carriers' system. The growers' system, as I have indicated, lessens the cost of production and improves the condition of the fruit.

At the first hearing the carriers gave expert testimony to the effect that the shippers' system could not possibly be a success—I

mean the shippers' system of pre-cooling and pre-icing—although the growers had demonstrated it to their own satisfaction.
229 The experts testified that theoretically it would not be possible for the growers to avoid re-icing in transit, and that the cars pre-cooled by the shippers would not have any ice in the bunkers when they arrrived at final destination. The carriers' experts also said that the growers' method would cause deterioration in the fruit, and consequent decay. The conflict of testimony upon the issue in this regard was so great that Commissioner Prouty stated that the Commission would not decide the question until tests had been made to demonstrate whether or not the growers' claims were well made. The growers therefore kept a record of all shipments pre-cooled by the growers, on a form prepared by Mr. Commissioner Prouty, which record shows the date and destination of each shipment, the amount of ice left in the bunkers at destination, the temperature of the car, etc. These reports are on file with the Commission, in the record in this case. The result of these tests was to confirm and demonstrate all that the carriers had claimed, and to thoroughly refute the carriers' expert testimony given on the first hearing.

These reports show that the fruit arrived at destination in excellent condition; that considerable ice was left in the bunkers of the cars at destination; that the percentage of decay on these shipments was less than on the shipments refrigerated by the carriers; and that none of the cars—I mean the cars shipped by the grow-
230 ers—were iced in transit, while on the cars pre-cooled by the carriers the record shows beyond contradiction that there was practically no saving as to the amount of ice required, by reason of re-icing in transit.

The Pacific Fruit Express introduced an exhibit purporting to show that on shipments refrigerated by them, there were but four cars which showed decay at final destination. This tabulation was checked up by the growers and is shown to be absolutely misleading and inaccurate, as many of the cars reported as found by the Pacific Fruit Express contained in fact from seven to ten per cent. of decay. To determine the extent of decay in a car of oranges, it is indispensable to open the boxes containing the fruit and examine the fruit; and the carriers in their exhibits, and as in the fact, did not and had not the facilities to open the boxes containing the fruit and to examine the fruit.

The carriers attack the showing made by the growers' records upon various grounds. First they say that the crop was a "strong" one in carrying qualities. This is true with respect to the crop for the past three seasons, but the evidence also demonstrates that when the crop is weak, the growers' pre-cooling system saves a large
231 portion which would otherwise be lost. While the refrigeration system, the so-called standard refrigeration of the carriers, has been generally satisfactory to the shippers, there was a larger per cent. of decay of the fruit refrigerated by the carriers than of the fruit pre-cooled and pre-iced by the growers. A comparison therefore between the two systems has been made with respect to the same crop. Even with a strong crop, the carriers do not seem

to have been able and do not claim that they are able—on the contrary, they claim directly to the contrary—to avoid re-icing in transit. They admit they cannot avoid re-icing in transit, and they do not avoid re-icing in transit; while, where the growers pre-cool and pre-ice, in every instance they avoid icing in transit, and demand that the carriers shall not interfere with the cars or open the vents or open the doors to let the hot air rush in.

The carriers further contend that—I am now reviewing, as I said I would, not only the arguments which the growers make, but in order to assist the Commission I am taking up every one, as fairly as I can, of the arguments advanced on the part of the carriers.

232 The carriers contend that where the shipments are pre-cooled by the growers, this pre-cooling ceases before hot weather sets in. This is untrue, as thirty-five pre-cooled shipments were made in July and thirty in August, 1910, and a number in September. I am speaking of the year 1910, during the test. It is also untrue that any of the growers owning pre-cooling plants availed themselves of the pre-cooling facilities of the carriers. They did not do so. They have stated, and they repeat, that they do not require the carriers' pre-cooling and pre-icing facilities, and have not used them and do not intend to use them. Counsel for the carriers have also overlooked that the entire crop of navels, so-called, is moved before the end of June, and it is during July and August only that the crop known as the Valencias are shipped, and these have much and far better carrying qualities.

The carriers further argue—and this is a little humorous—that the record shows that the fruit shipped by the growers who pre-cool and pre-ice was "picked" fruit. They have misunderstood the word "picked." The word "picked" occurs in the record, but it is "pick-up" fruit—that is, fruit that is picked up from the ground, and not fruit that is picked from the trees. Therefore counsel for the

233 carriers, to some considerable extent in their brief, have argued that the fruit that was in the cars which came under the test was "picked" fruit——

Commissioner Prouty (interposing): I think what they mean is that it was selected fruit.

Mr. Mayer: Yes, but it was not selected at all.

Commissioner Prouty: It was only selected in this sense, that the East Highlands and Pomona plants deal with a particularly good quality of oranges, perhaps better than the average.

Mr. Mayer: That would not furnish any argument against the rights of the Pomona or East Highlands plant.

Commissioner Prouty: No.

Mr. Mayer: It is an additional argument in favor of their right to do so.

Counsel for the carriers further argue that there were fewer diversions on fruit pre-cooled by the growers. The evidence shows to the contrary. The evidence shows that the Pomona plant has the average number of diversions, and that the East Highlands plant diverts about one car in ten, their shipments being made mostly and directly to regular customers and trade. The evidence shows

that many of the shipments made in August were diverted
234 three times—I am speaking of the growers' shipments, where the growers pre-cool and pre-ice. The carriers further say that many of the shipments made in the hot weather were in transit considerably longer than the average time of transit.

It is further contended by counsel for the carriers that the percentage of decay on the growers' shipments, pre-cooled by the growers, was greater than on the shipments pre-cooled by the carriers. That deduction is not sustained by the record, is unfair, is erroneous, and is not true. If the Commission have any doubt about it, the tabulated statements contained in the abstract of record, taking pages 5 and 7, will convince them. On those pages we have set forth a tabulated statement showing the percentages, and the comparsion is in favor of less decay where the fruit is pre-cooled and pre-iced by the growers.

Counsel for the carriers also lay great stress upon the fact that the temperature of the pre-cooled shipments at destination was higher than the shipments moving under standard refrigeration. Counsel again fall into this error—they confuse the temperature of the air in the car with the temperature of the fruit, and in their argument they take the temperature as taken of the hot air
235 that rushed into the car at destination, where the doors were opened, and did not take the temperature of the fruit itself. This statement I have made is shown by the records prepared by Mr. Commissioner Prouty and on file here, which are signed by the representatives of both the shippers and the carriers. The carriers had no facilities to take and did not take the temperature of the fruit in the pre-cooled cars, but merely took the temperature of the air in the cars. All the witnesses who testified on that subject have said that this is of absolutely no value whatever, because upon the opening of the doors of the car, there is an immediate rush of warm air from the outside into the car. The true criterion is what was and is the condition of the fruit at destination. This is shown by undisputed and undisputable evidence to have been excellent. I speak now of the fruit pre-cooled and pre-iced by the growers.

The carriers contend that if both shipper and grower can pre-cool, they will not be able to estimate the amount of refrigeration required. This is inaccurate, as Mr. Commissioner Prouty pointed out at the hearing. The carriers are familiar with the number of shipments ordinarily moved from a particular packing house, and if a particular packing house has a pre-cooling plant, the car-
236 rirers can readily and at once eliminate the shipments from that plant from their consideration.

The carriers, however, did not erect their plant with the idea that they were to do all the pre-cooling, nor are they entitled to a monopoly of the business. On February 13, 1909, there was a meeting between the growers and the representatives of the carriers. At that meeting a memorandum was taken of what occurred. The record of the minutes of the meeting is on file here.

It appeared that addresses were made on behalf of the growers, and at the conclusion of the meeting the result of the record of

that meeting shows that it was requested, first, that the carriers proceed with the installation of their pre-cooling plant, and, second, that where the shipper pre-cools his own fruit and furnishes his own initial icing, with instructions not to re-ice in transit, no charge be made either for refrigeration or freight on ice, the carriers being absolved from all liability. That was the record of the meeting attended by the shippers and the carriers.

It is further claimed on the part of the carriers that they are responsible for the condition of the fruit; that under the Interstate Commerce Act they are obligated to furnish the icing service, and that if the fruit reaches destination in a damaged condi-
237 tion, they will be responsible. There is no basis in logic or law, nor in any of the decisions of the Courts, for any such untenable, illegal contention. Unless the carriers are requested to furnish refrigeration, they are under no duty to do so, and where there is no duty, there is no liability.

Every icing tariff that has ever been issued recognizes the right of the shipper to say whether or not his shipments shall be refrigerated. All of the pre-cooled and pre-iced shipments made by the growers have moved under instructions, "Do not re-ice in transit," and under these instructions the shipper takes upon himself the sole responsibility that the fruit will reach the market in proper condition, and such instructions would constitute an absolute defense to the carrier against any liability for failure to ice in transit.

My time is flying fast. I have an array of authorities upon that subject, on which I shall hand the minutes to the Commission, as to both the doctrine and the cases supporting it.

The authorities cited by the carriers in their voluminous briefs to support their position in this respect have no bearing whatever upon the issue, and in every instance they merely hold that where the carrier undertakes to perform the icing service, the carrier is liable for a failure to properly do so. The very tariffs filed
238 in this case show that where the shipper pre-cools and pre-ices, there is an absolute release and discharge of liability of the carrier to the shipper.

The carriers, I submit—and I say this without any casting of aspersion—are not in good faith in claiming that the release of liability by the shipper would be ineffectual. It is not the law. The courts have never so held, and all courts that have passed upon the question have held directly to the contrary.

The tariffs which impose the $55 charge, where the car is pre-cooled by the carriers, provide expressly that the shipper must give a release.

The question of our right to ice initially in my opinion is not an issue in this case. The question is whether the carriers have the right to exact an arbitrary charge of $30 for no service of any kind rendered by the carriers, where we pre-cool and pre-ice and direct that the car shall not be iced in transit, and where the carrier is released and discharged of all liability.

Commissioner Prouty: They have withdrawn that privilege, Mr.

Mayer, and they make no such charge. Is not the question here upon their right to do that?

239 Mr. Mayer: Their right to do what?

Commissioner Prouty: The right to withdraw the tariff which permits pre-cooling and pre-icing. Today, as I understand the tariff, there is no such privilege. That privilege has either been withdrawn or will be withdrawn, according to statements made by counsel at the last hearing in Los Angeles.

Mr. Mayer: I do not so understand the record.

Commissioner Prouty: The real question, I think, is as to the right of the shipper to perform that service. Of course there is the further question as to the charge, when it was permitted. How is that, Mr. Durbrow?

Mr. Durbrow: The charge has not been withdrawn. During the course of the argument we suggested to your Honors that the charges, as first published, were for experimental purposes. That charge had served its purpose, and it was stated it would be withdrawn, but out of courtesy to the Commission we did not want to withdraw it until this question was finally determined by the Commission, but we say we will withdraw it and that it is our right to do so.

Commissioner Prouty: You claim the right to do it, and state you intend to withdraw it?

Mr. Durbrow: That is our precise position.

240 Mr. Mayer: In one of the briefs it is stated by counsel that they do intend to withdraw that right or privilege. It has not yet been withdrawn, and when we get to that bridge we hope to be able to cross it. I am arguing from the record as it is, and I also intend to argue as to our right to pre-cool and pre-ice—I mean our inherent right to do that at our groves in connection with our packing plants.

The right of the growers to pre-cool is not and cannot properly be denied. The evidence in the record shows that pre-icing by the shipper is inseparable from pre-cooling. To deny the growers the right to pre-ice is to deny the right to pre-cool, we assert, because one is inseparable from the other. To merely permit us to pre-cool our cars, to pre-cool the fruit, and then send the pre-cooled fruit in a hot car to Colton or San Bernardino, to the refrigerating plant of the carriers, a distance of thirty or forty or fifty or sixty miles, dependent upon the distance of the grove from the gathering point, is to destroy the efficacy of the whole process, and the testimony shows that to take pre-cooled fruit and put it into a hot car, during a period of transit which may take six or twelve or more or less hours, is to destroy the benefit and effect of the pre-cooling.

241 We contend, and we contend with emphasis and we believe with right, that the growers have the right to pre-cool their fruit, and to put ice in the cars at their packing houses, the same as the fresh beef industry enjoys that right and the same as the beer industry enjoys that right, and the same as scores of other

industries enjoy the right, where the car is pre-iced by the shipper at the shipper's factory or place of business.

Commissioner Prouty: May it not be, Mr. Mayer, that this is a duty of the railroad, and that it may perform that duty itself, or it may allow the shipper to perform it, or it may do it partly by itself and partly by the agency of the shipper, as it sees fit, so long as no discrimination is practiced?

Mr. Mayer: The carrier in my opinion will not assert that it is its duty to pre-cool and pre-ice at our packing plants. They do not do it and cannot do it, and they do not claim the right to do it and do not claim that it is their duty to do it.

Commissioner Prouty: They claim this, that pre-cooling and pre-icing is the equivalent of refrigeration, and that refrigeration is a part of the transportation; that they are obliged to do it and have the right to do it, and they are responsible for it, and they
242 are not obliged unless they see fit to allow you to do it.

Mr. Mayer: To which we reply that their premise, as was stated by your Honor, is not the law, and there are no authorities that sustain it. I am speaking now of the right of the shipper to pre-cool and pre-ice at his plant or factory, where the carrier does not do it and is in no position to do it and is unwilling to do it. I am not speaking of the duty on the part of the carrier to ice in transit where the shipper requires such refrigeration. But there is no authority of this Commission or of any court, which an exhaustive search can disclose, which permits the carrier to say, "Mr. Shipper, we will not let you pre-cool or pre-ice at your factory or your packing house or your beef house or your fruit house. We have an icing station one hundred miles from your slaughter-house or your fruit-house or your factory, and if you want to pre-ice, you have got to put your beef or your fruit or your beer into a hot car, and when we gather it at our initial shipping point, we will then re-ice it."

Commissioner Prouty: It is certainly the duty of these carriers to furnish the refrigeration if they are required to do it or asked to do it. They have furnished the facilities for that pur-
243 pose. Do you think the shipper ought to be allowed to go into competition with the carrier in the transaction of this business? Has not the carrier a right to say that the business shall all be done by them, so they may know what to depend upon and what facilities to furnish?

Mr. Mayer: Certainly not; certainly not. Such a doctrine would be abhorrent to reason and practice and the rulings of the courts.

Do not let me be misunderstood. I am speaking of a system by which the fruit growers can pre-cool—and they admit our right to pre-cool; you have that in your mind, your Honor. They have, openly, upon the record, stated that we have the right to pre-cool and that they cannot interfere with that right. That was stated at the hearing by one of the counsel.

I contend, and I think the courts in their decisions support the contention, that if our system, our industry, requires a system of pre-cooling and refrigeration which the carrier cannot supply and

does not supply, we can pre-cool and pre-ice ourselves. Do not let us confuse or confound the system which the carrier has in vogue with our system. The record shows that they cannot pre-cool and do not pre-cool at our groves or packing houses.

244 Commissioner Prouty: If the system which the carrier has in vogue, which is the one generally in use, is satisfactory, is there any obligation upon the part of the railroads to allow you to use your system?

Mr. Mayer: Certainly if they do not give a system that is equally good as a substitute.

I will continue in my argument, if the Commission please. I answered the suggestions the Commissioner has drawn out, because they are made in their briefs.

The growers and shippers lease not only the space in the car, but they lease the space that is occupied by the ice-bunkers. The carriers concede that if the ice were placed in a package, or in a barrel, as it is with respect to fish, poultry, etc., they could not refuse to accept such shipments. What difference is there in principle whether the ice is put in a barrel of oysters or in a box of butter or inside of the car or inside of the package which is in the car? The bunkers were made for the purpose of placing the ice therein, and it was not contemplated that the ice would necessarily be placed therein by the carriers. The carriers have admitted that the carriage of ice inheres in the freight rate. The growers have submitted and the carriers have agreed that the cost of the

245 carriage of the ice inheres in the freight rate.

Commissioner Prouty: I do not quite understand that to be so.

Mr. Mayer: I will show it to your Honor from the records. I will show it to you from their sworn answer in the Lemon Rate case in this very litigation.

Commissioner Prouty: It might be too much to ask them to bring into uniformity their defenses in the two cases.

Mr. Mayer: In the Lemon Rate case, under oath they answered that the freight rate included the cost of the carriage of the ice, and that sworn answer is in this record. President Ripley so testified in a letter which has been introduced in this case and which is shown in this record.

Commissioner Prouty: Did Mr. Ripley say that all the Santa Fe wanted was the cost of the service or the cost of the ice?

Mr. Mayer: I will read what he said:

"The large tonnage of ice which we must carry in the cars to preserve the fruit adds greatly to our expense, of course, but it is or should be considered in making the rate itself, and we should not and do not attempt to get paid for it by a profit on the ice."

246 In another part of the same letter, written by President Ripley on November 23, 1905, he said:

"I have stated often, and again repeat, that we do not care to make money out of the grower on icing charges. The matter of fact is we are now icing at cost. Our refrigerator charges are based

on the price we pay for ice, not only for this purpose, but for our own purposes also."

Your Honors will perceive that when I said to shorten my time would be perhaps as inconvenient to counsel as to the Commission, that I was fairly accurate. My time is going rapidly, and I have yet much to say.

The carriers cannot perform the service that the growers can, and therefore they cannot deny us the right to do so. I have shown that the carriers' system does not permit immediate pre-cooling; that it cannot guard against the effects of car shortage or delay in furnishing cars; that it does not effect any saving in cost, and does not avoid icing in transit.

To deny the shippers the right to pre-cool and pre-ice is to deny them the benefits of the investigation made by the Government for their benefit. Mr. Powell has reported, as I have shown, that to properly pre-cool takes from forty to forty-eight hours, and
247 that the sooner the fruit is brought under the influences of refrigeration, the better it is for the fruit. The shipper is the one that is primarily interested in the condition of his fruit, and he should be the one to say in what manner his fruit should be treated. When it is borne in mind that the buyers prefer fruit pre-cooled by the growers, why should the carriers be permitted to say that the carrier must have a monopoly of the business?

Commissioner Prouty: You need not spend time on that proposition. You have the right to pre-cool your fruit. That is so and must be so.

Mr. Mayer: We cannot pre-cool the fruit unless we pre-ice it. It is inseparable from pre-icing. Suppose, Mr. Commissioner Prouty, that the icing station of the railroad was 250 miles distant?

Commissioner Prouty: You may assume that. It certainly would not do any good to pre-cool your oranges unless you could ice at the packing houses.

Mr. Mayer: The carrier does not ice at the packing house. The carrier cannot ice at the packing house. They cannot now and never can. They ice at their own icing station, which in this case is fifty or sixty or seventy-five or thirty miles away. The
248 Commissioner will remember there is a loop there, and some groves are nearer and others further from the icing station where the carrier collects the cars. But if the carrier can postpone and defer the right to act seventy-five miles or thirty miles, it can postpone it and defer it two hundred and fifty miles. It does not pre-ice our cars at our pre-cooling plant at our groves. It cannot pre-ice them. To give us the right to pre-cool, divorced from the right to pre-ice, is to give a promise to the ear and break it to the hope.

Commissioner Lane: How is that shown? Is it shown by the fact that the oranges or lemons as they come through are not in as good condition when following the procedure of the carriers as when following your procedure?

Mr. Mayer: Yes, and shown also that such fruit is iced in transit—shown that such fruit must be re-iced in transit at our cost—

when if we pre-cooled and pre-iced it, it costs us not over thirty dollars a car, while the standard refrigeration rates of the carriers, as I have indicated, is to Chicago $62.50 and to New York $75 and to Boston $77.50.

The carriers claim that the thirty dollar rate was put in to permit the growers to experiment with their theories. I wish I had the time, I am sorry I have not the time, to read from the record
249 the reasons that are given by the carriers for this thirty-dollar charge. They are as laughable as they are absurd, and are as puerile as they are unreasonable.

They claim that the thirty-dollar rate was put in to permit the growers to experiment. Now that the growers have proven their system to be a success, why should the carriers be permitted to deny to the growers the right to perform for themselves the service of pre-cooling and pre-icing? Why should the growers be permitted to experiment and, when the experiment has been proven a success, be denied the right to avail themselves of the benefit of it?

The carriers, as I have said, do not perform the service of pre-icing in the way or in the manner that the growers do. The shippers carefully examine and insulate the cars. They load the ice in the bunkers in solid blocks, and by this method they put about six tons of ice into the bunkers. This ice is manufactured especially so as to fit into the bunkers of the cars. The carriers put in considerably less ice, and they break this ice into small chunks, which does not accomplish the result that the shippers' method accomplishes. Again the evidence demonstrates that the pre-icing must be done at the plant of the shipper in order to attain the best results.

It is argued that the privilege works a discrimination.
250 Let us see.

Considerable stress is laid upon the proposition by counsel in their interesting, lengthy and exhaustive briefs. It is attempted by them to create the impression that the owners of the pre-cooling plants are all very large shippers and that their purpose in building pre-cooling plants is to secure for them a monopoly, a monopoly to Fruit Growers' Association, this voluntary association, not for profit, which represents ninety per cent of the growers of California and which assesses its members only the actual cost of protecting the interests of its members, and has nothing to do with their losses or their profits.

It is contended by counsel that it is the purpose to force the small shippers into the fold of that organization. In the same brief in which that statement is made they argue that on the pre-cooling issue we represent only seven per cent of the growers. That is true apparently. The fact is that on account of the assessment of this arbitrary charge of thirty dollars per car, the building of pre-cooling and pre-icing plants has ceased until this litigation can be determined; and I think it was suggested by Mr. Commissioner Prouty—at least I am so advised—that pending this hearing matters
251 be left about as they were. I am so advised, Mr. Commissioner Prouty, that that was your Honor's suggestion.

So if we represent only seven per cent, the argument would be advanced that if they had assessed this arbitrary charge of thirty dollars in 1909, before our pre-cooling plant was constructed, then we would not represent one per cent, because there would have been no pre-cooling plant at all.

I am not half through my argument, if the Commission please. When is my hour and a half up, Mr. Chairman?

Commissioner Clements: You have eighteen or twenty minutes yet.

Mr. Mayer: It is impossible to do much in that time or to be of much benefit to the Commission in the time allowed me. I am only about half-way through with what I wanted addressed to the Commission, and I want to give Mr. Call some time. I am just getting to what I regard a most interesting part.

The Chairman (after consultation): We are disposed to extend your time to at least two hours on a side.

Mr. Durbrow: I have to be in New York tomorrow morning on a very important matter. My little girl is going to have an operation there.

252 The Chairman: I think we will give you an opportunity to be heard this afternoon, Mr. Durbrow.

Mr. Durbrow: I shall appreciate it very much if your Honors will do so.

The Chairman: Is there any objection to Mr. Durbrow following you, Mr. Mayer, before Mr. Call is heard?

Mr. Mayer: Not a particle. I am somewhat in the same position Mr. Durbrow is, only the operation——

Mr. Durbrow: I do not like to shorten the argument, but it is very important I should be there.

Mr. Mayer: I have no objection at all. I may myself have to go back to Chicago in the morning to attend an operation which is to be performed, not on a child, but on the packers, and I may have to be there when it is performed.

The Chairman: If we allow two hours on a side, I should remind you, Mr. Mayer, that there is three-quarters of an hour left of your two hours.

Mr. Mayer: Yes, sir; I appreciate the indulgence and the privilege.

The small growers are complaining here just as well as the large growers. The complainant Fruit Exchange consists of both the large and small growers, and all the owners of the pre-cooling

253 plants are not large growers, as is evidenced by the number of their shipments.

No growers are here claiming a discrimination. None of the small growers are here suggesting or intimating that there is a discrimination in our contention. The cry is raised by the railroads, we submit, as a subterfuge and pretext for maintaining the thirty-dollar charge, which the evidence shows to be entirely without foundation, and for which no service whatever is rendered. All the complainants are complaining of is the thirty-dollar charge, which they contend is wrong.

Mr. Chase, one of the largest growers in California, has stated that while his organization has decided not to erect a pre-cooling plant, still he had no objection and could see no discrimination against him if other growers were permitted to erect pre-cooling plants. Mr. Lyon, a witness called by the railroads, admitted to the same effect. He said:

"It seems to me that if the large shipper does his pre-cooling and pre-icing and if there is no corresponding service rendered by the railroad company, he should have the benefit of that for the investment and expense he has been put to, even if it is an advantage to the large shipper, and I am a small shipper myself in saying that."

254 Only one witness was called by the railroads who stated that he was opposed to pre-cooling, and that witness was Mr. Phillips, of the Citrus Union, a union composed—and the word was used with deliberation in the brief—of "speculators"; I mean men who do not grow fruit, but who buy to sell, and that is all. Mr. Phillips is the last remnant of the old Ealre private car-line, which was absorbed, as some of the members of the Commission will know, by a client of mine and afterwards got into litigation, and Mr. Earle remained in connection with the speculation in oranges. He is not a grower, never has been a grower, and the Citrus Union, for which he pretends to speak, a nebulous, intangible, chimerical sort of institution, has dissolved since this hearing began, and is no longer in existence.

In a great industry like the citrus fruit industry of California, it is strange that the carriers were not able to produce a representative grower to testify that he was opposed to pre-cooling. In every industry, my experience has been that some black sheep can be found to furnish a pretext for obstructive testimony; but even that has not existed in this case.

255 All the shippers have a right to erect plants, and therefore there can be no discrimination. The Commission cannot say that all shippers will not avail themselves of this privilege, either individually or collectively.

It is true that the pre-cooling system requires an investment, but so does a packing house, or packing machinery, and so does an orange grove, and if each small shipper were compelled to build his own house or to pack his own fruit, he would undoubtedly be at a disadvantage. The shippers of California have solved that difficulty by co-operation, by the formation of a mutual association, and there is no doubt that if necessary they will do the same with respect to pre-cooling.

Again, the service is not a carrier service and therefore does not come within the meaning or intent of the interstate commerce Act. It is not a carrier service to pre-cool and pre-ice at the packing house. Discrimination within the meaning of the interstate commerce Act means that the shippers are performing something which the carriers are obliged to perform, and are thereby obtaining a concession in the freight rates. Here the freight rate is equal as to all, but the carriers cannot perform this service as far as this record

shows, and they do not perform this service. They cannot build pre-cooling plants at the groves or the packing houses or at every cross-roads station, nor can they do many of the things that
256 the shippers can do under their methods. Therefore the discrimination theory is not applicable, and falls to the ground.

The argument here assumes that the carriers will not meet the competition. On the other branch of this case, that is, the question of the excessive refrigeration charge, I expect to show that the carriers are making a profit over the cost of the ice of from twenty-five dollars to thirty dollars a car in the refrigeration of citrus fruit, while they are announcing that they are performing the service at cost. The carriers therefore, if they are desirous of preventing the erection of pre-cooling plants, can reduce their charges to such a basis that there will be no incentive for the growers to erect pre-cooling plants.

Again, the carriers say that they will be able to perform the service as well and as cheaply as the shipper. They have said that if competition is permitted, they can successfully compete and get the lion's share of the business. In fact, the manager of the Santa Fe Despatch said: "I think we can beat them to death." That was his testimony. If this contention is correct, it will perhaps not be necessary for the shippers to erect pre-cooling plants, and in such case there can be no discrimination.

257 Again, the carriers argue that it really costs the growers more to pre-cool than this record shows, and many pages of their briefs are devoted to arguing that when we say it costs us thirty dollars, we are mistaken, that it costs us more. The record shows it costs us in no instance to exceed thirty-two dollars. But if it is so, if it does cost us more than thirty dollars, if it does cost so much more than we say it does, wherein lies the discrimination? The assessment of the thirty-dollar charge in such a case by the carriers would result in a discrimination against us—that is, against the shippers who do the pre-cooling and pre-icing. A discrimination presupposes that the shippers owning pre-cooling plants can utilize them and does so at a less loss than if the shipments were refrigerated in the old standard way.

The character of the traffic is such that no one can say or prove that discrimination results. Whether oranges shall move under refrigeration or not rests to a large extent within the shippers' discretion, which may be influenced by weather conditions, the condition and grade of the fruit, and the market to which it is forwarded. One shipper might ice his shipments, while another shipper similarly situated might not. Oranges are shipped under ice principally to give them a fresh appearance and, to a
258 greater or less extent, prevent decay from physical bruises, etc.

Again, there are many grades and brands of oranges, some of which command a higher price than others. This cannot be better evidenced than by the wide range of the market quotations. Some brands are better in carrying qualities. Thus Mr. Chase, one of the

largest growers, refrigerates but a small percentage of his fruit, and does so merely to improve its appearance. In other words, no grower can point to any shipment and say that the pre-cooling and pre-icing of that shipment by the shipper discriminates against him or prejudices him in any way whatever. This will perhaps account for the failure of the carriers to produce a competent witness to testify upon that score.

It is not the purpose of the interstate commerce Act, nor the province of the Interstate Commerce Commission, to place every shipper upon terms of absolute equality. The freight rate must be the same as to all, but there are many incidental matters outside of the province of the carriers, that may occasion more or less discrimination. Thus, by the exercise of the undisputed right of pre-cooling without pre-icing, a grower can often avoid the payment of refrigeration charges. I repeat that that right is con-
259 ceded—the right to pre-cool. One grower puts up a pre-cooling plant. He can ship or may ship without pre-icing or refrigeration in transit. He has an advantage over another shipper who has no pre-cooling plant. But is that discrimination? The packers, who own their own cars and their own pre-cooling and icing plants, obtain advantages which other packers not similarly situated might be unable to obtain. Here the owners of pre-cooling plants do not make any profit on the business of their shippers, as they merely pre-cool their own shipments, and by the adoption of the system they are effecting an economy in their own business; therefore all discrimination cannot be avoided and all parties be made equal by law. Neither the Commission nor the courts can wipe out the difference between industry and indolence, between success and failure, between enterprise and sloth, between poverty and wealth.

I will sum up all of their excuses now that are made for the thirty-dollar charge. First, they say it is for the use of the car as a refrigerator car. The charge cannot be justified as a charge for the use of the car. It is the duty of the defendants to furnish a car suitable for the carriage of the commodity which it undertakes to transport. The same car is used whether the shipment moves under ventilation, and no extra charge is there added. The Pacific
260 Fruit Express owns its refrigerator cars, and on the Santa Fe the cars are leased to the Santa Fe Despatch. The railroad pays the car line company mileage for the use of these cars. For the car line company to charge the shipper extra therefor is to exact a double compensation.

The thirty dollar charge appears in the refrigeration tariffs of the defendants, and the entire charge is retained by the car line companies. Under the holdings of the Interstate Commerce Commission, where the railroad company pays mileage for the use of a car, this car to all intents and purposes becomes the car of the railroad company. The car line company is not concerned with the manner in which the car is used by the shipper, nor whether the shipper places ice in the car or not. The character of the car presupposes that it will be used as a refrigerator car, and the car line

company receives the mileage on this basis. Nor can the railroad company make an extra charge for the use of the car, as under all the authorities it is the duty of the railroad company to furnish a car suitable to the commodity which it engages to transport. The use of the car is included in the freight rate which the shipper pays to the railroad.

261 Defendants say, however, that it is their disability that the ventilated shippers use a refrigerator car, and that they find it more economical to furnish the same car for both ventilated and refrigerated shipments, therefore, they say, it is immaterial that no extra charge for the use of the car is made against the ventilated shipper. They overlook, however, the rules of the Railroad Refrigerator Service Association, of which Association these defendant carriers are members. These rules expressly provide that oranges must be moved in refrigerator cars whether the shipper desires it or not, and even though the shipment moves under ventilation. This rule is doubtless as necessary for the protection of the railroad company as for the shipper, because if oranges moved in a car without ice bunkers, the railroad company would be unable to protect the shipment in case of delay. Therefore the carrier cannot be permitted to assess an extra charge for furnishing a car that is necessary and suitable for the proper transportation of fruit, as this is admittedly included in the rate.

Again, the car is used for the transportation of many perishable commodities, such as deciduous fruits, which always move under ice, and against which no extra charge is assessed for the use of the car.

262 To sum up, if the cars be treated as the equipment of the railroad companies, then the railroad companies cannot justify this extra charge, as it is included in their freight rate. If the car lines be treated as independent carriers and the cars as belonging to them, then when they receive mileage from the railroads they are procuring all they bargained for, and cannot exact double compensation.

The railroads claim positive charges for inspection service. No such service is necessary, nor is it desired. The inspection service is maintained for the convenience of the railroad, and the expense thereof is not charged or chargeable against any particular traffic. It inheres in the freight rates. It is as necessary to inspect ventilated shipments as refrigerated shipments, and as there is no charge made for inspection there, none should be made here. Furthermore, when shipments are made pre-cooled and pre-iced, there can be and need be no inspection, because the carrier is instructed not to ice in transit, not to interfere with the car, and is released from all liability.

There can, therefore, be no inspection of a pre-cooled and pre-iced car, where it is pre-cooled and pre-iced by the shipper. All that the shippers ask is that the pre-cooled shipment be not touched, but be left alone by the carrier.

263 Then it is suggested that the charge of $30, this arbitrary charge of $30 per car where the growers pre-ice and pre-cool, is a charge for freight on the ice. Let us analyze that.

The record shows that this $30 is retained by the car lines and not by the railroads. The burden of carrying the ice falls upon the transportation department of the railroad, and therefore the car lines have no concern therewith. The nature of the traffic contemplates that at times it moves under ice, and the carrying of this ice necessarily inheres in the freight rate. No better proof is needed than the circumstance that the railroad makes no extra charge for carrying ice where the fruit moves under standard refrigeration, no matter who performs the service. This is admitted by the Santa Fe, in a letter written by its President to the Complainants on November 23, 1905, to which I have already alluded.

In the answer of the Santa Fe, in the lemon injunction suit, the defendant carriers swore that the carrying of the ice inhered in the freight rate, and the same thing has been admitted by the officials of the Southern Pacific Company, as pointed out in the brief on file here in this case.

Mr. Durbrow: Will you read that language?

264 Mr. Mayer: Which language?

Mr. Durbrow: Showing the charge inheres in the freight rate?

Mr. Mayer: Mr. Matthews will give it to you while I proceed with my argument. I think it is page 51 of my brief.

The record shows that the thirty dollar charge is retained by the initial lines, and is not shared by their eastern connections. Therefore, if the charge is justifiable as freight on ice, the eastern lines, who bear a portion of that burden, should be permitted to share in the charge, and as they are not, this is conclusive evidence that the charge is not for freight on ice.

When the Armour Car Line and other private car lines handled the refrigerator service over these lines, they were permitted to retain the entire refrigeration charge. No charge was assessed by the railroads for carrying the ice, and if ice was carried free for the Armour car lines, there is no justification for any charge against these complainants. The practice in this particular is evidenced in many of the decisions of the Commission, and in the refrigeration tariffs filed by the defendants.

The records show, even if they were performing an ad-

265 ditional service, which they do not, that they are more than compensated, far more than compensated. Where the cars are pre-cooled by the growers, they are loaded seven rows wide instead of six. We have filed an exhibit in this record showing that the earnings per gross ton, including the weight of the car, the weight of the ice, and the weight of the oranges, is considerably greater on the shipments pre-cooled and pre-iced by the growers, than the earnings per gross ton on the ventilated shipments, or on the shipments refrigerated by the carriers.

If you will turn to page 111 of our opening brief you will find we have collected there from their sworn answer the items of expense relied upon as factors inhering in the freight rate.

The defendants, however, apparently waive the excuses to which I have directed attention for the assessment of the thirty dollar

charge, and now say that the charge was imposed to prevent discrimination. They tacitly admit that the rate was not based upon the cost or the value in service. In three distinct places in this record do the carriers admit that. The very fact that the charge is justified upon this basis shows that it has no foundation.

The two systems, we urge, should be permitted to compete.
266 At the present time the shippers' method appears to be the better and the cheaper, and if, as the carriers say, they can perform the service cheaper and as well as the shippers, let them do so. If both systems compete, they will be given an opportunity to try out their claims. If they can and will do so, then the discrimination and monopoly arguments both vanish and are necessarily annihilated.

On the other hand, the growers who own pre-cooling plants are satisfied with their present methods, and have demonstrated that they can perform the service better and more economically than do the carriers. With the elimination of the thirty dollar charge, there is no doubt they can perform it cheaper, and in the interest of economy alone they should perform the service if they desire. Even the defendants' witnesses admit that the cheapest method ought to prevail. Therefore the industry should not be taxed to maintain an inferior and more expensive system.

Defendants say that even with competition they will be able to obtain the lion's share of the business, and if they reduce the refrigeration charges to the proper basis they can doubtless obtain nearly all of it. In any event, both systems should con-
267 tinue to exist, and as the carriers admit that the cheapest method ought to prevail, and as they claim they can perform the service cheaper and as well as the growers, they should be permitted to make good their claims. But on the showing made on this record, the shippers should not be denied the superior advantages which they have shown attach to their system. To deny them the right is to say that the carriers are entitled to a monopoly in a service which they have not shown their ability to perform, in a service which is not a part of the transportation service, which they cannot be obligated or compelled to perform, which they are unwilling to perform and never will perform.

The other point in the case I have not time to go to, and that is the cost of refrigeration. I have one suggestion to make in conclusion.

If the Commission denies us the right of pre-cooling and pre-icing our fruit, there is no remedy for us. I am not overlooking the fact that we have an appeal to the Court of Commerce, when it is in creation, and from that to the Supreme Court of the United States; but what I mean is the mischief that will have been done by denying us the right—if it be a doubtful right, and we con-
tend it is not involved in doubt—never can be compensated
268 for. If we are denied the right of pre-cooling and pre-icing and establishing our plant, the harm we will have suffered if in one or two or three or four years the Court should finally hold the growers have the right, would create a burden and loss im-

measurable in damage for which there can be no compensation. From the reverse holding by this Commission, a holding that we are entitled to pre-cool and pre-ice our fruit, to do a service which the carrier is not obligated to do and cannot be forced to do, if by any possibility it should be held such a decision were erroneous, no harm can come to the carrier. The measure of the carriers' loss is ascertainable, if there be any loss. Bear in mind, if the Commission please, that the carriers insist upon this record that they perform the refrigeration service at cost. Therefore, if they be prevented from performing that service, by our pre-cooling and pre-icing at our own plant, they suffer no loss, because they contend they conduct the business without a profit. Therefore, if, in one or five years it should be held that this is discrimination, or that we are not entitled to pre-cool and pre-ice, the carriers will have suffered no harm, because the carriers insist throughout this record that they do the refrigeration service at cost, and therefore if they are relieved of the discharge of that duty, if it be a duty,
269 they are relieved of the performance of an obligation which is attended with no profit.

Commissioner Clements: Assuming that it is their duty to refrigerate, and that they insist upon doing it instead of paying the shipper for doing it, is it a practicable thing for them to do the icing after the pre-cooling is completed?

Mr. Mayer: It is not practicable. It is not practicable for them to supplant our system unless they put a pre-icing plant at our packing house.

Commissioner Clements: That could be done. You say it would be impracticable because it would cost so much to do it?

Mr. Mayer: We cannot compel them in law to do it.

Commissioner Prouty: The railroads do not care anything about doing it.

Mr. Mayer: And we could not compel them to do it.

Commissioner Clements: If you cannot compel them to do it, your pre-icing goes for nothing, because they do not do it, or because it costs too much to do it?

Mr. Mayer: The Commission rendered an opinion in the Eighth Interstate Commerce Report, which passed upon that question. They there said that what is known as a service of this char-
270 acter, crossing switch tracks, etc., is a service which cannot be required, nor can the carriers be compelled to perform it.

I regret that my time is so short that I cannot discuss the second point, with reference to the refrigeration charges. We will have to rely upon our brief for discussion of that second point.

I thank you.

271 *Argument of Mr. C. W. Durbrow on Behalf of the Defendants.*

Mr. Durbrow: May it please the Commission, Mr. Norton and I had planned that he would discuss the questions of fact involved and that I should follow him and discuss the questions

of law, which your Honors must necessarily take into consideration in determining the questions in this case; but because of the arrangements in the matter of the time for argument we will have to somewhat change our original plans.

I do not think it will result in any inconvenience to the Commission or in any wise embarrass counsel by reason of the fact that your Honors will not find any great conflict in the evidence. But your Honors will find great conflict in the interpretation that has been placed upon that evidence, and your Honors will find great conflict in the conclusions that have been drawn from the evidence.

That is perhaps excusable because Mr. Mayer did not attend these hearings and must necessarily rely upon the work of his assistants in placing these facts before your Honors.

Mr. Mayer has made some broad and sweeping statements which I shall show your Honors are not supported by the evidence. They may be excusable, but there is absolutely no excuse for Mr.
272 Mayer to stand up before this Commission and say that certain propositions of law are unsupported by authority on the one hand and are supported by authority on the other hand, and I shall show your Honors that that statement is borne out by the decisions of the Supreme Court of the United States and by the decisions of the Interstate Commerce Commission itself.

Your Honors will be somewhat surprised to learn that notwithstanding the fact Mr. Mayer tells you that the main question for discussion, the main point for your Honors to determine is as to the right of the shipper to perform a part of this refrigeration service, when the witnesses of the complainants themselves stated, and counsel stated at the hearing that they did not care to do so.

Mr. Story states, at page 190 of the transcript, that he does not believe one shipper in one hundred wants to do it. Mr. Call states——

Mr. Call (interrupting): On what page did he state that?

Mr. Durbrow: Mr. Story stated in the presence of Mr. Commissioner Prouty, after the tests had been made at San Bernardino, that there was no question but what the carriers could do
273 the service better and cheaper than the shippers, and that they ought to do so provided the charges were reasonable.

Mr. Call: If they would do it as cheaply and as well——

Mr. Durbrow: No, he did not——

Mr. Mayer: Oh, yes he did. I have read the record and I am perfectly familiar with it. Your briefs do not quote the whole of it.

Mr. Durbrow: That is all I can refer to now. Mr. Norton, I leave that for you to look up.

However that may be, your Honors, we do not find ourselves called upon to rely upon the statements made by Mr. Story in the presence of Mr. Commissioner Prouty.

Mr. Norton: It is in the record; I will give it to you.

Mr. Durbrow: I want to read what counsel for complainants said during the early hours of this hearing:

"We feel this way about it, that they can afford to do it for less money than we can, because we have a number of small packing houses around the country that it would be quite a burden for them to install their pre-cooling plants. They can do it if they have to, but we do not want to do it."

Before I close my argument I will show you why they
274 do not want to do it, and I will show you where Mr. Dreher, the champion of the pre-cooling cause, on behalf of the shippers, says they ought not to do it because it will result in discrimination. That is the testimony, and there is no conflict in the testimony so far as the results that will flow from this prayed order of the Commission are concerned.

Mr. Mayer has devoted his principal argument, and in fact all of his arguments, to the question of the rights of the shippers to pre-cool and pre-ice their shipments. I am going to argue to your Honors that they should not be entitled to perform that service, even though the carriers were compellable to allow them to do so, because it is an impossibility, because it is impracticable, because it will result in inevitable discrimination; and I shall show further that the carriers may stand upon their rights under the law as it now exists, and deny the shippers the right to perform any part of the pre-cooling, pre-icing or refrigeration service.

Mr. Call: If they have the legal right to do it, how can you stop them?

Mr. Durbrow: We cannot stop them, if they have the legal right. That is one of the questions.

Mr. Norton: Since they ask for those pages, let me give
275 it to them. At page 157 of the record of the Los Angeles hearing, Mr. Call stated:

"I admit the plant of the Santa Fe may do the work as well as the shipper could."

President Story testified:

"The shippers would build no more plants if the carriers would do the work in the right way and at the right price."

Mr. Call: We stand on that now.

Mr. Durbrow: Counsel have argued for your Honors, and they lay great stress on it in their brief, and they set forth a statement made by Mr. Commissioner Prouty during the course of the hearing, in which Mr. Commissioner Prouty said to the carriers:

"You should perform this service as cheaply as the shippers, or you should permit them to do it."

I do not think Mr. Commissioner Prouty—and when you go into conference I think he will bear out what I say—intended to say to the carriers:

"You must permit the shippers to perform this service unless you perform it as cheaply as they do."

I think Mr. Commissioner Prouty meant to indicate to counsel
at the hearing that the cost to the shipper of performing the
276 service was an evidentiary fact that might be taken into consideration by the Commission when they came to determine the reasonableness of the rate, and if they found the shippers could

perform that service cheaper than the carriers, then they might say to the carrier, "Your charges are unreasonably high and they will be reduced."

I do not understand, particularly in view of some language that was used by Mr. Commissioner Prouty, that he indicated in any sense whatever that the carriers must permit the shippers to perform this service if they wished to deny them that right or privilege.

It has been proven by experience, and the experience has resulted in the custom of refrigerating certain shipments of deciduous fruit and citrus fruit during certain portions of the year. The shipments were originally carried in box cars. That was supplanted by the ventilating devices, and those were followed by refrigeration, and subsequently this precooling system came into vogue.

From the very beginning the carriers have segregated the charge that was exacted for the refrigeration service, and have imposed that as a separate and distinct charge, and necessarily so and rightly so,
277 because the shippers who must ship under refrigeration should bear their proportion of that charge and should pay for the additional service, and it would be a hardship, and a discrimination, and it would be unjust to the other shippers to not require them to bear any part of the refrigeration charges.

I want to impress this upon your Honors at the beginning, that so far as the refrigeration charges are concerned, so far as the refrigeration service is concerned, it is a service separate and distinct and apart from the service that is rendered in the transportation of the fruit. A argue further that so far as the entire transportation service is concerned, so far as the common law and statutory duty of the carriers is concerned, it is the duty of the carriers, and has been so found by courts and commissions, to transport refrigerated shipments when it is necessary to do so and to provide refrigeration service in its entirety.

Your Honors, in a case in 11th Interstate Commerce Reports, entitled "In the Matter of Refrigeration Charges and Transportation Charges," held that the service is inseparable from the transportation service, and that it is a part of it.

Your Honors will find you passed upon this question of the duty
278 of interstate carriers to perform this refrigeration service, subsequent to the passage of the Hepburn Amendment, in which we were called upon to render this duty directly to the shipper as a transportation service, or through the instrumentality of a car line.

Counsel has stated what was testified to by Mr. Edwards, one of the operators of these pre-cooling plants—that it is a physical impossibility, that it is not practicable and feasible to transport any shipments that are pre-cooled and which are not pre-iced at the precooling plant and carried forward with ice in the bunkers. So we might eliminate from consideration all shipments which might move pre-cooled without having been pre-iced.

This leaves us two classes of shipments to consider: First, shipments that move forward pre-cooled and pre-iced, whether by the shippers' plants, without re-icing in transit, and, second, shipments

which are pre-cooled and pre-iced either by the shippers' or the carriers' plants, and which move forward to final destination iced in transit by the carrier.

The shippers have plants at the three points specified by Mr. Mayer: They have a capacity of seventy-eight cars. They can cool twenty cars a day, but remember, your Honors, that when they are pre-cooling, so called, their plants are occupied to their full
279 capacity; their entire facilities are utilized, because all they do is to put the shipment into a cold storage room, and the storage capacity is thereby occupied at the time the shipments are being pre-cooled, so-called. The carriers have provided pre-cooling plants and refrigeration plants at Colton, and Roseville, so far as the Pacific Fruit Express is concerned, and at San Bernardino, so far as the Santa Fe is concerned.

The capacity of the Southern Pacific Company's plant at Colton has been enlarged since the first hearing, as appears from the testimony, and we are now prepared to cool forty cars every three hours, or 320 cars per day.

The Santa Fe Plant can pre-cool between two hundred and three hundred cars a day, depending upon the temperature of the fruit delivered to them. In addition to that, the Pacific Fruit Express has a capacity for storing 1500 tons of ice and for manufacturing 250 tons of ice per day, which is used in pre-cooling the cars as they are shipped out from Colton.

Mr. Commissioner Prouty and Mr. Commissioner Lane heard the testimony, and your Honors must know that these plants were not constructed hastily, as claimed by counsel in their briefs, but these plants were constructed after the Pacific Fruit Express spent
280 $75,000 in experimental work, and Mr. Powell went out and conducted these experiments, and the shippers and the carriers had a joint meeting at which these matters were discussed, and Mr. Phillips, the gentleman here who represents the shippers' case was there at that time in all his glory, and was addressing Mr. Story, president of the present organization and Mr. Story shut off Mr. Phillips, and said:

"We do not care to hear from you any more, because this meeting is practically unanimous that the carriers should proceed to construct their plants, and at the very earliest day."

Having that in mind, and at the express request of the shippers, and because they wanted the pre-cooling established in addition to the standard refrigeration, resulting in better preservation of the fruit in transit, we have expended $500,000 in the erection of two plants, one at Colton and one at Roseville Junction, and the Santa Fe Company have expended a large sum of money in the construction of their plant at San Bernardino.

The shippers require from 48 to 72 hours, according to the testimony in this case, to pre-cool their shipments. They say it is necessary to pre-cool these shipments slowly. It is, at their plants, because of the very necessities of the situation. The carriers pre-

cool the shipments in about three hours. That is the aver-
281 age time. The record shows that on one shipment re-cooled and pre-iced at one shipper's plant, it required four days to reduce the fruit from the temperature of 63 degrees to a temperature of 33 degrees, just one degree above the freezing point. If there is any danger in either of these two competitive refrigerating or pre-cooling methods, the danger lies in bringing the fruit within one degree of the freezing points, instead of bringing it to 42 or 45 degrees, the carrying temperature of the fruit.

Your Honors, I say that the shippers pre-cool down to 33 degrees. The Carriers pre-cool down to 42 or 45 degrees. I am going to tell you why. The reason is this: When the shippers have performed the service as well as they can in reducing the temperature down to 33 degrees they have no means of refrigerating or pre-cooling that car, but they extend a canvass vestibule from their packing house, not from the pre-cooling room, into the car, and the shipments are loaded into the car, the temperature of which, according to Mr. Edwards' testimony, ranges from 110 to 112 degrees. These cooled shipments are loaded into that hot car at their plants, and that is why it is necessary to reduce their temperature down to
33 degrees, because they know that the carrying capacity of
282 that fruit is only 42 or 45 degrees, and that if they put it in at 42 or 45 degrees, the heat in the car necessarily must result in a rise in the temperature, causing a deterioration in the fruit.

The fruit is cooled at the carriers' plants to carrying capacity. The refrigerating power of ice, according to all of the testimony in this case, is only sufficient to maintain a temperature of 42 to 45 degrees. That is the temperature to which the carriers reduce the fruit, at the same time pre-cooling the car and also the insulation of that car, so that when that fruit moves out from the Southern Pacific Company's plant or the Santa Fe Company's plant, it moves out at an average temperature equal to the temperature in the car—that, is, 42 to 45 degrees.

Not only do the carriers reduce to the proper carrying temperature, but as that fruit moves toward destination, we say it is necessary to re-ice in transit, and that is proven by the records of the complainants and defendants in this case—that it is necessary to re-ice in transit in order to maintain that equal temperature.

I say further that when the fruit is reduced to 33 degrees and loaded into a hot car that fruit suffers deterioration at that
283 time for the very reason that the four elements that must be eliminated so far as possible in the refrigeration of fruit, in order to preserve its keeping qualities, are heat, light, time, and moisture. So that when you load a shipment of fruit into a hot car there necessarily, according to the testimony in this case, must result some condensation, because the dew point is reached and that moisture settles on the fruit and there is no evaporation with the ice in the car during its entire trip across the continent. That method of pre-cooling down to 33 degrees and placing that fruit in the car and the resultant condensation must necessarily cause deterioration in

that shipment, under the sworn testimony in this case and under the common knowledge of every man.

If you place a pitcher of ice water in this room at its present temperature, you will find condensation on that pitcher similar to the condensation I have just described, and when this condensation takes place within the car and that moisture covers the oranges it results in deterioration.

A great deal has been said about shipments being pre-cooled quickly. Just for a moment, if your Honors please, I want to refer to the plaintiffs' brief in which they lay great stress upon this proposition. At page 14 of their brief they quote Mr. Powell,
284 and they say:

"The pre-cooled shipments also bear out the principle of the shipments under ventilation and ice in that the least decay developed in the oranges that were cooled quickly after — packed."

They quote from Professor Powell at many other points. They also quote from Mr. Gay, but they do not read that testimony. Mr. Gay was asked the question on cross-examination—he is a refrigeration engineer, the only man who qualified to express a theoretical opinion at this hearing, and he said in answer to a question on cross-examination:

"Q. Then it is your idea that the sooner the orange can be cooled after it is picked the better?"

"A. Yes sir, absolutely."

If your Honors please, it is agreed here that pre-cooling is a necessity and an advantage. Counsel lay great emphasis upon that point in their briefs, and we agree with them. But it also appears from the testimony in this case, from all the witnesses—and there is no conflict upon the subject at all—that the sooner that orange is brought under refrigeration, the better—and I mean under refrigeration, and not placed under the influence of refrigeration, as they are careful to say in their briefs, when they talk about their
285 pre-cooling plants. But when it is refrigerated, when the multiplication of spores in the orange is checked by reason of the fact that such temperature is reached that they cannot multiply, the condition of the fruit is preserved. That is done by the carriers at their plants within three hours, while at the shippers' plants it requires from 48 to 72 hours.

There is a great difference, in considering this question, between "placing under refrigeration," and "placing under the influence of refrigeration."

What delay results? Of course great emphasis has been placed upon this proposition of bringing this fruit under refrigeration at the earliest possible time. How do the two plants compare in that respect? The evidence shows so far as their shipments are concerned that it takes seventy-two hours in some instances to cool that fruit down to a proper temperature, according to their testimony, according to their ideals of what is a proper temperature.

The evidence shows switch engines begin operating in the neighborhood of four o'clock, picking up these cars and assembling them, these cars containing pre-cooled shipments at the pre-cooling

plants at San Bernardino, and that these shipments are refrigerated and are under way on an average of from four to eight hours
286 after the fruit is packed in the car at the packing houses. Do your Honors believe any great deterioration in that fruit is going to result from the fact that from four to eight hours expire from the time the fruit is loaded into the car until it is cooled to its carrying capacity and is well upon its way across the country?

Your Honors, the real purpose of refrigeration is to bring the fruit to a refrigerated point at the very earliest moment. The real purpose of refrigeration is to prevent the shipments going out from the plants or packing houses on their way across this 1500 miles of desert and not being brought under refrigeration at the time it reaches this hot territory—the very purpose of refrigeration and the only purpose of refrigeration and pre-cooling is to bring the fruit to the lowest carrying temperature at the very earliest date.

Your Honors will recall that upon the main case in this particular instance, and also in the consolidated forwarding case, the shippers made a great point that the shipments should go forward to destination at the very earliest possible time. We say it is 36 hours at least under our method. Every shipment is brought under refrigeration under this method at the carriers' plant. Can there be any
287 question in your Honors' minds as to the respective methods of the two systems? In one, the fruit is brought to the point of 33 degrees, and the freezing point is 32 degrees. In the other the fruit is brought to the carrying temperature of 42 or 45 degrees. Could your Honors possibly find that our method of pre-cooling and pre-icing shipments is not satisfactory to the shippers, in that we eliminate time, one of the elements that enters into the deterioration of the fruit, and we bring the fruit to the proper carrying temperature, and when we eliminate another of the factors, moisture, the only two remaining factors with which we have to contend are light and heat, and we overcome those largely, as I have already stated, by bringing the fruit to the proper temperature within 36 hours.

I am not going to spend very much time on this question of the superiority of one plant over the other. I think that is absolutely demonstrated by the evidence in this case and by the facts to which I have briefly called your Honors' attention.

But there is something besides the preliminary service rendered by the carriers in pre-cooling and pre-icing this fruit. The evidence disclosed is conflicting—Mr. Commissioner Prouty heard it at the last hearing—and the evidence in the second case bears out the
288 contention of the experts, and is in accordance with their opinions expressed in the original case, that it is absolutely necessary to re-ice shipments in transit. We say yes, it is necessary. They quote from Mr. Gay. They quote from somebody else. They forget to quote from Mr. Leeds and Mr. Secrist. They are also of the opinion that it is necessary to re-ice in transit.

Why should there be such a rush to reduce these shipments to the refrigerated point at the initial point where the fruit is fresh, and permit that temperature to rise to 60 or 70 or 75 degrees, as the

evidence discloses as to these pre-cooled shipments, after one of these elements, time, has entered so largely into the keeping qualities of these fruits?

Can it be contended by counsel here that it is absolutely necessary, when the fruit is fresh and ripe and has just been bruised, if it has been bruised at all, to bring that temperature down to 33 degrees, and, after the element of time has entered into the question and it is upon its journey eight days or more, especially when diverted, that they can permit the temperature to rise to 75 degrees with safety? That can not possibly be.

Mr. Gay testified that 60 degrees was the critical temperature. The fruit should be carried forward to destination at an
289 even temperature, and it is only by re-icing the shipments in transit that you can maintain the average temperature to which the shipments are reduced at the pre-cooling plants of the carriers.

Commissioner Clements: If the shipper wants to take all those chances and offers the fruit to you and you get it and you are relieved from responsibility for injuries resulting, what objection can you have?

Mr. Durbrow: There is none in the world. The carriers would gladly do it, so far as the legal department is concerned—I do not know how this answer may please the refrigerating men; because they say another class of shipments moving over the lines will demoralize their service. But so far as the carriers are concerned, if we would feel satisfied under the law that we could accept a release from the shipper, releasing us from all our common law and statutory liability, there would be no objection to permitting the shippers to perform this service.

I am going to argue, however, that under the decisions of the Supreme Court of the United States, under the decisions of the state courts, and under the decisions of the Interstate Commerce Commission itself we cannot do that. I have particular ref-
290 erence to the case decided by Mr. Commissioner Lane in 13 Interstate Commerce Commission reports at page 550, "In the matter of released rights." I am going to argue that we cannot relieve ourselves from the full measure of our common law liability, and if we cannot do so we must protect ourselves by inspection in transit and by re-icing in transit.

If it will satisfy your Honors just as well to let me discuss that point in the order in which I had anticipated, I will drop that for the time being.

Commissioner Clements: Certainly.

Mr. Durbrow: Some tests were made here—and by the way I omitted to introduce in evidence, under the permission extended by Mr. Commissioner Prouty, some statements prepared for the month of August. We did prepare statements for the months of June and July, but I have now a statement for the month of August, and in compliance with Mr. Commissioner Prouty's request we also have selected out of the statements for the four months the shipments that were made during the last week of each month, in order that the

Commission and its assistants may check these statements with the tests made by the Commission.

With the permission of the Commission, I will introduce
291 this statement in evidence at this time.

Mr. Mayer: It is rather late for us. It is rather late for you to be putting in that statement now. Pardon the interruption—I am not personal to you at all—but we think some of your statements need very careful inspection.

Mr. Durbrow: I think they ought to be inspected carefully, and I hope they will be. I think it is a matter for the Commission to determine how far these statements correctly represent the situation. So far as any objection to offering the statement at this time is concerned, of course the statement is a little late, but with the Commission's permission I will file it.

(Said statement was marked "C. W. Durbrow, Exhibit, offered on argument, Washington, D. C., December 8, 1910," and is attached hereto.)

Mr. Durbrow: I made the bald statement that the tests made by the carriers and shippers corroborate and confirm the testimony of the experts at the first hearing. I made the statement that the tests show that it is necessary for the shipments to be re-iced in transit.

Commissioner Prouty: Let us see about that. There were 124 cars shipped from East Highlands without being re-iced, and
292 they came through perfect. There were 207 cars shipped from Pomona, and they came through perfect with the exception of seven cars. Those shipments from Pomona, as I remember it, were made at all seasons of the year. They ran as late as July, and they came as far east, I think, as New England.

In view of those facts, how can you say it is impossible to carry oranges satisfactorily to destination by that method?

Mr. Durbrow: I will be very glad to answer that point, and I am very glad your Honor made that suggestion, for this reason. I made the statement the evidence disclosed absolutely that it is impossible for the shippers to pre-cool and pre-ice their shipments and carry them forward to destination without re-icing in transit. Your Honor wants to know how I justify that statement. I justify it upon these two grounds—and I am laying this down as a foundation.

It appears from the evidence that the shippers selected the fruit that moved from their different plants.

Commissioner Prouty: I understand that all of the fruit which moved from these plants during the icing season went forward by this method. Is not that so?

Mr. Mayer: Yes sir.

Commissioner Prouty: There was no selection of the fruit.
293 Mr. Durbrow: All the shipments made by these packing houses were not pre-cooled and pre-iced.

Commissioner Prouty: All the shipments made during this period of the year were.

Mr. Durbrow: I do not understand that to be the fact.

Commissioner Prouty: There was no pre-cooling and pre-icing

until the refrigeration season began, but all shipments made from these plants after the beginning of the refrigeration season were pre-cooled and pre-iced.

Mr. Mayer: Yes sir; and that is in the record.

Mr. Durbrow: Very well. The evidence discloses that out of 790 cars that were pre-cooled and pre-iced by the shippers 42 of them arrived at destination in bad condition.

Commissioner Prouty: But those were from the Los Angeles concern.

Mr. Durbrow: I will find out about these plants.

Commissioner Prouty: The Los Angeles method is not good, as admitted by the shippers themselves, because they could not do the proper thing.

Mr. Durbrow: I am laying this down as a foundation, and I am making a very broad assumption here to meet your Honor's suggestion.

294 Of the 790 cars that were pre-cooled and pre-iced by the shippers and not re-iced, 42 of them arrived in bad condition. Of all the cars shipped by the Pacific Fruit Express only four of the cars during the months of May, June and July, arrived with a greater amount of decay than three per cent.

Mr. Mayer: We dispute that, and the record shows your contention is wrong.

Mr. Durbrow: You dispute it by an unqualified statement in your brief, but it is not in the evidence.

Mr. Call: It is, too.

Mr. Durbrow: Point it out to me right now, if you will, because I want to have something to say about it.

Mr. Call: It is in the exhibits filed with the Commission.

Mr. Durbrow: I am laying that down for these three months.

Between fifty and one hundred cars of the shippers were re-iced at destination——

Commissioner Prouty (interposing): It is admitted that after the car reaches destination it is sometimes opened and the fruit allowed to remain in the car. In that event the shippers, for their own convenience may re-ice the car just exactly as when your car arrives at destination and is not to be unloaded immediately,

295 you ice the car or he employs you to ice the car. That is rather a storage proposition than a transportation proposition.

Mr. Durbrow: I understand that exactly, but I am merely laying a foundation for an answer to your Honor's question, because I want to have a good deal to say about that later on.

I want to assume that all the shipments that were pre-cooled and pre-iced by the shippers moved to final destination in perfect condition this year. The evidence discloses that this is the best fruit on record. It is the strongest crop that has ever been known in California. Your Honors must also call to mind the testimony of the complainants' witnesses in which they said that they had avoided diversion. Mr. Call makes the statement that they had avoided diversions. It was said that practically all shipments moved forward to their original destination.

Commissioner Prouty: My recollection is that of the East Highlands shipments there were not as many diversions, but of the Pomona shipments the diversions were about up to the average.

Mr. Durbrow: I am going to assume that that is the con-
296 dition. I am going to state to the other Commissioners, who were not present at that hearing, that the shippers' cars arrived at their destinations with but one-sixth to one-half of the ice in their bunkers, and the temperature ranging from 60 to 75 degrees. According to their own testimony, that fruit must have suffered deterioration. Professor Powell says the practice of the shippers of transferring decay from the shipper to the receiver should be condemned. I am going to argue to your Honors that if it is necessary to re-ice any of those cars in transit in order that they may be diverted during any month of the year, or if these cars must be re-iced at destination in order to hold those cars for final disposition the shippers must, as they testified, concede that the refrigeration service of the carriers en route, the re-icing in transit, is necessary; and if that service is necessary at all, they must bear their proportion of that charge, because—and if this Commission should rule otherwise they could not be supported by the courts—this Commission would say these carriers must maintain these plants to be prepared to discharge their common law and statutory duty, the icing of all shipments that may be offered to them, and permitting the shippers in this case to simply offer such shipments to them
297 for transportation as they desire.

Commissioner Prouty: You are probably justified in assuming that if these cars require re-icing in transit in any case, unless the cars are unduly delayed for your accommodation—if they require re-icing in transit you are not obliged to accord this privilege of pre-cooling and pre-icing; but would an icing at destination, after the car has been received by the shipper and opened by the shipper, be a transportation service, in your view of the matter?

Mr. Durbrow: I believe that is a part of our refrigerating service. We are obliged to maintain plants at destination to provide ice to re-ice the car, and if we are obliged to do so we are not obliged to perform any kind of service unless we are obliged to perform all.

Commissioner Prouty: In case of a shipment pre-cooled and pre-iced, would you be obliged to perform that service at destination?

Mr. Durbrow: I believe under the law we would. I think that is elementary, your Honor, that when a carrier in the discharge of its common law or statutory duty, accepts a shipment for shipment, and it knows by its experience that that shipment will arrive at destination in a bad condition and that it can be pre-
298 vented by re-icing in transit, it is our duty, so far as we can, to protect that shipment, because they have decided many cases against the company I represent——

Commissioner Prouty (interposing): I am not talking about in transit. I say when the car has reached its destination and has been opened by the shipper and has been accepted by the shipper, and when the ice is put in for his accommodation and at his re-

quest, do you think that is a transportation service you are obliged to accord?

Mr. Durbrow: I say we are obliged to accord that service if the shipper does not remove the shipment from the car. I say it is our duty.

Commissioner Prouty: Suppose the shipper pre-cools his fruit and pre-ices that car and seals up those bundles and simply instructs you to transport that car to destination, and says, "I will assume all risks by reason of the defective refrigeration, provided you exercise due diligence in the transportation of the car"; is there any refrigeration service which you are called upon to perform? Is there any service except the pure service of transportation?

Mr. Durbrow: Yes, your Honor.

Commissioner Prouty: What is it?

299 Mr. Durbrow: We furnish a car, insulated, for the express purpose of transporting refrigerated shipments. We furnish the refrigerating device. Under our common law and statutory duty we are obliged to maintain our plants with sufficient facilities to re-ice that shipment en route, to pre-cool it and pre-ice it——

Commissioner Prouty (interposing): Why are you obliged to maintain facilities for re-icing the shipment? The shipper instructs you not to re-ice, and says, "I will assume all responsibility or risk arising from the fact that you do not re-ice the car." Why are you obliged to maintain facilities to re-ice that car?

Mr. Durbrow: With that particular shipment we may not be obliged to provide refrigeration service en route. I say we may not, but I will tell your Honor why I think we are. Assuming that we are not obliged to maintain refrigeration facilities en route, to ice that particular car, that shipper, when the car is offered to us at point or origin could have insisted, and said, "I want this car re-iced en route," and we are obliged to do it. If we cannot escape our liability by a contract with the shipper by saying, "You forever more must refrigerate your own shipments; we will not do so

300 under this obligation, this contract, under the convention we will enter into; we will prepare and refrigerate that shipment and take care of it to destination, if you will never call upon us again to handle a car for you"—we might say, "Yes, but the law imposes that duty upon us absolutely," and this Commission has so found, and yet we are obliged to stand ready with that refrigeration device and facilities en route to take care of that shipment. If the shipper calls upon us to do so, I say he is entitled to it and must be required to pay some part of the maintenance of that refrigeration service and device.

Commissioner Prouty: So far as the car is concerned, the car is exactly the same in which you transport all these oranges.

Mr. Durbrow: Yes.

Commissioner Prouty: You are no more required to furnish a separate car for these oranges than for the transportation of live stock—a peculiar kind of car is required in either case. If the shipment is pre-cooled you are not required to re-ice in transit, and

the shipper probably has the option of pre-cooling or requiring you to re-ice. You say he ought not to have that option?

Mr. Durbrow: I say he ought not to have that option.

301 Commissioner Prouty: And because he may have the option, he has no right to exercise the privilege?

Mr. Durbrow: Yes sir.

Commissioner Prouty: Well, I think so too.

Mr. Durbrow: I want to show why I think we are obliged to care for that shipment notwithstanding the instructions. I can cite, by having reference to the books, a number of authorities where shipments have been delivered to the carrier with instructions to haul the shipments in a certain manner. A storm arises. For instance, we run across a flood in Texas. We might be instructed to carry the shipment in open cars, and some contingency might arise where we might be compelled to open the cars, knowing that the shipment is going to suffer loss. It is an elementary proposition of law we must do everything in our power to prevent any greater loss than has already been occasioned. We must maintain this refrigeration service or shipments cannot be carried forward to ultimate destination without re-icing in transit, particularly when it is necessary for us to permit this diversion privilege, according to the wishes of the shippers.

The complainants' witnesses all contended it was necessary for us to maintain these re-icing stations in transit. Mr. Dreher
302 testified it was necessary for us to do so. Mr. Story said if the diversions were going to be allowed, it was necessary to provide refrigeration en route because the shipments could only move forward to destination, according to his testimony, under this method.

If the shipments moved forward to direct destination, that would be one proposition; but the evidence in this case disclosed there were over 10,780 diversions of shipments originating on the Salt Lake and the Southern Pacific Company's lines alone last year, and upon every diversion there was an average delay of the cars of five days.

If we are going to permit this privilege of diversion—though we are not obliged to do so as a matter of law, because we enter into the original contract to transport the shipment from its original point or origin to its ultimate point of destination; no law can compel us to transport that shipment to another point. If we cannot be compelled to do so we are according them a privilege which your Honors found, in your decision in a Maine case was of great value to them and which put the carriers to great expense.

We must take into consideration that they route out these tramp cars, and when they reach some place like Fort Worth, having no real destination, the shipper may say, "Take that car to New
303 England or New York or take it into the southeastern territory," and we are obliged to do that.

It would be a physical impossibility, with ten thousand seven hundred and eighty cars, all of which may have been delayed five days, and some of them many days longer than that for us to go into each and every car and say, "Ice here," and "Do not ice here." When we are charged with the duty of refrigeration—and we are

charged, under the express privileges of the statutes, as your Honors found in the Florida Fruit and Vegetable case—we are obliged to see that that refrigeration service is performed to the satisfaction of the shippers during the entire course of its transit. This your Honors decided in 11th Interstate Commerce Commission Reports, where you cite a case from 98th Virginia. Your Honors cited that case in support of the proposition that where the carrier takes a refrigerator car into a train, it makes that car its own and it is responsible for all damage that may result to that shipment, during the course of its transit, and that is a duty that we are bound to under the express provisions of the statute and under our common law duty, for that matter. And if we are obliged to meet that obligation we are entitled to protect ourselves and provide a re-
304 frigeration service in its entirety, which meets the approval of the shippers, and which assures us that this large number of claims which originally were presented will not longer be brought to our attention.

We are entitled to say to all those shippers, "We will maintain this entire service for your benefit. You must bear your proportion of the expense of maintaining that refrigeration service, you must pay us for maintaining that device in the car, you must pay us for maintaining the installation in the car," because that is only provided in the regular refrigeration service, and the carriers, at their election, to save expense, provide the same kind of a car for ventilated shipments, and if it were not for those refrigerated shipments this nature of equipment used in this service would not be so great.

One year a weak crop might come along, and, as Mr. Edwards testified, everybody would want to have his shipments pre-cooled and pre-iced, and we would have to respond to the demands made upon us or else respond in damages. In that situation we would be bound to exercise particular care in the shipment of the fruit, icing and re-icing these shipments from the time they were deliv-
305 ered to us until they reached their final destination in the East.

Commissioner Prouty: Suppose, instead of having invented or discovered this method of pre-cooling and pre-icing the United States Government had discovered some sort of a box in which this fruit could be shipped in connection with the ice, so that refrigeration might be had in that way. Do you say you would have a right to prohibit the shipper from using that method?

Mr. Durbrow: No sir.

Commissioner Prouty: That is equivalent to refrigeration.

Mr. Durbrow: But the shipper would furnish his own box. The ice and the box and the contents of the box would be placed in an ordinary box car, the cost of which is a great deal less than the cost of the regular refrigerator car.

Commissioner Prouty: Oh, well, we must assume you get in your rate the expense for furnishing this car. The car is always taken into account in fixing these rates. You invest money in an expensive car, and that is taken into consideration in the rate. The car being here and you having your pay for furnishing this kind of a car,

what is the difference between allowing the shipper to put into this car a box of oranges, providing the refrigeration in connec-
306 tion with the box, and taking this car and filling up the bunkers with ice, provided you are not required to render any service after that car is delivered into your hands?

Mr. Durbrow: If your Honor please, you have found in the Consolidated Forwarding Case, and also "In Re Transportation of Fruit," and also in the Florida Fruit & Vegetable Case, that the carriers are entitled to some compensation for the use of the refrigerating device which is in their cars, and that we are entitled to pay for the loss of the seventeen per cent. of space when the refrigerating device is put in use. We are entitled to something for the transportation of that ice. We are entitled to something for inspection.

Commissioner Prouty: But there is no inspection in the case of the pre-cooled shipments. You are entitled to something for the transportation of the ice. It seems to me it is clear somebody is entitled to something for the transportation of that ice. It has to be put in there and hauled. It may be more than compensated for by the greater earnings of the car, and from the fact that you put in an additional tier of boxes; still you must take account of the fact there is the additional weight of the ice.

Mr. Durbrow: I say all these elements are properly chargeable in the refrigeration rate, and your Honors have also held we
307 are entitled to take into consideration the risk.

Commissioner Prouty: What risk?

Mr. Durbrow: The risk on the refrigerated shipments.

Commissioner Prouty: But in the case of these pre-cooled shipments there is no risk on your part?

Mr. Durbrow: I say there is a risk if we cannot relieve ourselves from the full measure of our common law liability.

There are several other points I want to discuss. I will have to pass hurriedly onto them. I want to discuss the proposition of the right of the shippers to pre-cool and pre-ice. It is said under Section 15 of the Interstate Commerce Act that the shipper is entitled to perform some part of this refrigeration service, and they said the packing houses——

Mr. Mayer: We do not claim that at all.

Mr. Durbrow: I understood you did.

Mr. Mayer: We do not claim under that section.

Mr. Durbrow: I say that so far as that section is concerned, the law provides that the carriers may at their election permit a shipper to perform some part of the carriers' duty in furnishing equipment or furnishing appliances or something else. But the law does not say that the carrier must allow the shipper to do that.

308 I am not contending here, of course, that shipments in all cases go through without damage; I do not contend that mischief may not occur in certain isolated cases. At certain seasons of the year, or where the crop is particularly strong, and when you may have a low temperature, their shipments may go through without any bad effects; but I say that it is impossible to move all of their shipments through under that system, and I say that if it is

impossible to move them all through, we are not obliged to have three or four different kinds of refrigeration service. But if we are charged with the common law and statutory duty of performing refrigeration service, as your Honors found in the Florida case, in 14th Interstate Commerce Commission reports, that we are obliged to do, we must say to the shipper, "If you wish to refrigerate, we will do it for you, but you cannot perform any part of that service."

This Commission of course has been vested with authority to pass upon the reasonableness of these charges.

In the Truck Farmers' Association case your Honors said refrigeration was not incidental to but was inseparable from the transportation service itself.

In the Matter of Charges for Transportation of Fruit, in
309 11th Interstate Commerce Commission Reports, the Commission cites with approval the Virginia case in that particular, and states:

"It is not the ice, but refrigeration that the carrier furnishes to accompany the shipment during every moment of its journey."

In the Florida case, as I said, your Honors found it was the express duty of the carriers, under the amended law, to perform the refrigeration service.

Your Honors found, In re Transportation of Fruit, 11th Interstate Commerce Commission Reports, that if it was our duty to perform this service we might do it directly or indirectly, through the instrumentality of a car line, and that any contract which we entered into for the transportation of that fruit through the instrumentality of a car line might be excluded. They cited the express case in 117th United States, page 1, they cited the Pullman case in 115th United States; they cited the Stock Yards Case decided by the Supreme Court in 192nd U. S., in support of the proposition that where it was our duty to perform the service—and you laid down that as a premise for your final conclusion—that we might enter into an exclusive contract with those car lines to per-
310 form this service for us; and if that is good law, the shippers cannot monopolize any part of the service, and they cannot say at their election:

"We will refrigerate a certain shipment today and you are to precool and pre-ice and refrigerate a certain shipment tomorrow."

Being charged with that duty we may do it ourselves exclusively, or we may employ car lines to discharge the duty for us.

I do not want to cut into Mr. Norton's time, your Honor, as he has some important questions to discuss. I think my time has about expired.

Commissioner Prouty: You had better go on until five o'clock. We will take care of Mr. Norton.

Mr. Durbrow: Thank you.

I have laid down as a general proposition here these rules of law—that it is the duty of the carrier to provide this service, and it is held by the Courts, and so held by the Interstate Commerce Commission that we are entitled to perform that service—and that is only preliminary to the suggestion that was made by Mr. Commis-

sioner Prouty during the course of the hearing—and you will recall, Mr. Commissioner Prouty, that you said the Commis-
311 sion would not require, you felt very sure, these carriers to permit shippers to perform any part of the refrigeration service unless they could be relieved from their common law liability to respond in damages to these shippers for all losses that might be occasioned in the course of transit.

Commissioner Prouty: Oh, no, I did not say that. I said I felt very confident, and I feel so now, that the shippers would have no right to pre-cool and pre-ice these cars unless the carrier could be released from liability for damage due to defective refrigeration. Of course if a car runs off the track, that is not their fault. If you run it off on some sidetrack somewhere and leave it there for two weeks, that is not their fault, and you are responsible for that.

Mr. Durbrow: I can justify my position upon that principle as well as upon law.

Suppose there was no law upon which I could rely, and I should come to your Honors and be called upon to make an argument in support of the proposition that shippers could not relieve us from this responsibility. I would say to your Honors that whenever a shipment moved initially from California territory to destination, the final destination is probably its diverted destination, and
312 I would say that in every case a shipment arrives at destination in bad condition, and the question would arise as to whether that shipment had arrived at destination in an improper condition because some vent was opened or because of some defect in the car, or the question would be whether it was defective refrigeration, and we would be subjected to a multiplicity of actions, and constantly defending these cases that might arise; and I say for that very reason we, for our own protection must deny this right.

I go further than that and say we cannot enter into any contract with these shippers which will relieve us from any part of our common law and statutory liability. As was held in the Virginia Case, which your Honors cited with approval in 11th Interstate Commerce Commission reports, it is made our duty to take care of these refrigerator cars unless we wish to respond in damages. If we take a car for shipment and we find upon inspection at some point in Texas, for instance, that the shipment will not move forward to destination in perfect condition unless it is re-iced in transit, we are entitled to say that we will re-ice that car. If a shipment is offered to us for shipment, and we believe from our experience that it will not arrive at destination in perfect condition unless it
313 is re-iced in transit, we are entitled to say, "We will not accept any shipment unless we think it is in proper condition as to refrigeration", and we cannot say, "Mr. Shipper, we will accept from you a release relieving us from responsibility."

I say to your Honors that the decision of the Supreme Court of the United States in the Hart Case, in 112th United States is a leading case upon the subject.

Under the Southern case, decided by the Supreme Court of the United States in 150th United States, and under the Hill case

decided by the Supreme Court of Oregon recently, we cannot enter into a contract which would relieve us from responsibility for any loss that might have been prevented by the carrier itself.

I am not going to spend much time on this proposition, because Mr. Commissioner Lane wrote a very able opinion In the Matter of Released Rights, in 13th Interstate Commerce Commission reports, at page 550, and Mr. Commission Lane based his opinion upon the Hart case, and he cites it as a leading case. He goes on to show that the carrier must respond to the full measure of its common law liability, and that any contract by which the carrier seeks to relieve itself from any responsibility made in anticipation of any negligence or, as Mr. Commissioner Lane says, "for any
314 causes which are not beyond its control, is absolutely null and void and cannot be enforced."

It is not beyond the control of these carriers to prevent decay or deterioration in shipments, because under the system they have today they may take a shipment right from its point of origin and inspect it en route and whenever that shipment requires ice in shipment it is supplied by the carriers. They cite this Reyman Case in the Indian reports in support of the proposition that the carriers may relieve themselves from responsibility in certain cases; but you will find that where they have a right in certain instance, and where, upon the statements made by the shippers they accept them, where experience teaches them what the outcome may be, the carriers are, as was said in the express decision, put upon their notice that the shipment has suffered deterioration, it becomes their duty to properly care for that shipment, and if they do not do so they must respond in damages for whatever injuries may be occasioned by reason of their failure to protect that shipment to the full extent of their ability.

Mr. Call: To save you time, I do not think there is any serious difference of opinion on the law on that question. If you can show it is your duty to ice our cars, whether we want you to
315 or not, I will agree with you that it is a duty you cannot waive; but the question is whether you can show it is your duty whether we want you to or not.

Mr. Durbrow: I appreciate that concession very much because I am getting hoarse and my time is fleating. I am very glad to accept that proposition, and I think it ends this case so far as this question is concerned, and all I am obliged to do is to refer to the 14th Interstate Commerce Commission Reports, in which there is a case decided by Mr. Commissioner Prouty, where the Commission held it was the duty of the carrier under the amended act to provide this service, and under the decision of the Virginia case in 98th Virginia, which Mr. Commissioner Prouty cited with approval in support of the proposition that it was our duty to accept all shipments offered to us for refrigeration. There cannot be any question about that.

Mr. Mayer: Are you compelled to refrigerate it?

Mr. Durbrow: Yes, if we find upon inspection that the fruit is suffering deterioration. We do it now and always have done it.

These are the reasons I have assigned why we should not be compelled to permit the shipper to perform this service. I say it is

a matter of simple justice to the carriers and to the shippers
316 alike. I say we cannot be compelled to do it as matter of law;
but if we could be compelled to do it or are to be compelled to do it, what result will follow?

According to the testimony of Mr. Lyon, it would place the small shipper at a great disadvantage if he were obliged to provide these pre-cooling plants. Mr. Dreher, one of the champions of this system, testified a good many of the smaller shippers would not and could not go to providing pre-cooling plants. Mr. Phillips, who I think impressed your Honor- with his fairness and candor at the trial, put his finger on the sore spot, when he stated why his organization, a smaller organization, to be sure, than this complainant organization here, did not want to have these shippers provide their own pre-cooling plants. He said:

"It is because if we do it will result in discrimination against the smaller shippers, and we would have to put our shipments of citrus fruit in the hands of our competitors to pre-cool for us, and it would give them a great advantage over us."

That must inevitably follow and that is the conclusion your Honors must inevitably reach here in determining what the results
would be, and, as your Honors held In the Matter of
317 Transportation of Fruit—I just want to read a word from that case——

Mr. Call (interrupting): If we have the legal right to do it, there can be no question of discrimination, can there?

Mr. Durbrow: Yes, there can, if you have a right to do it, and as Hutchinson on Carriers said, if the Commission are called upon to determine such a question as this—I want to read the exact language from Hutchinson on Carriers. This is it:

"In fixing rates, the Commission should properly bear in mind that whether the effect of a certain rate" (and of course the same rule applies with respect to any certain practice) "will be the creation of a monopoly to the detriment of the public or of the shippers, and the Commission should not enter an order which will tend to create such a monopoly."

That is from Hutchinson on Carriers, Section 587, and is supported by a large number of authorities.

Your Honors entertain the same views with respect to these questions Your Honors sit here as a tribunal to which all shippers come to have their difficulties with the carriers determined; but your
Honors have universally held that you do not consider the
318 interests of the shippers who appear before you, but you consider the interests of every shipper along that line who may be affected by any order that your Honors may enter, and your Honors had that in mind when you used this language in 11th Interstate Commerce Commission Reports, at page 138:

"To hold that the shipper must furnish his own ice would be of necessity to throw the handling of commodities requiring refrigeration into the hands of large shippers, who could provide those facilities, and to entirely prohibit the shipment of such commodities for long distances by small shippers."

That is the result that would flow and follow from an order of the Commission permitting these shippers, whoever they may be, to perform any part of the refrigeration service itself.

I have five minutes more, your Honors. I will not be here tomorrow when Mr. Norton discusses other features of this case. I have had to pass very hurriedly over these features assigned to me for discussion, and I hope your Honors will read our brief with reference to the reasonableness of these charges. Of course, that may have been a side issue so far as these complainants are concerned, but we believe we have demonstrated that the cost to the carrier of performing this service leaves them no profit. For instance, in the
319 table set up in our main brief we show that after we have paid for the ice used by the shipment—the amount of ice on every shipment during six months is set forth in those tables—we have an average of $16.08 left with which to meet the other charges.

The cost of refrigeration must necessarily vary for the reason that the cost of the ice necessarily varies from season to season, and for the further reason that it often becomes necessary to transport ice great distances in order to supply the demands.

Mr. Call: Where do you get any evidence of how much ice you use?

Mr. Durbrow: It is shown very fully in our tables, and we have taken, according to Mr. Commissioner Prouty's suggestion, the exact destination to which these different rates apply, to show what the aggregate charge is, and what the cost of the ice is, and it leaves us this amount in our hands to meet all the other expenses involved in this refrigerator service.

We are entitled to inspection. Mr. Mayer said the shippers did not need any inspection, but I do not care if they do not want inspection, the carriers necessarily must inspect to protect themselves from any claim that might be made on account of insufficient refrigeration.

Mr. Call: We are talking about pre-cooled cars.

320 Mr. Durbrow: I am saying that so far as this charge itself is concerned. I am not talking about pre-cooled cars now. I am talking about cars moving forward to destination.

Mr. Norton will take care of the reasonableness of this thirty dollar charge.

Commissioner Prouty: Mr. Call, do you concede the charge of $50 to the Missouri River is reasonable?

Mr. Call: Not by any means.

Mr. Durbrow: After we paid for ice in the month of July and August, according to our statements, we had $5.12 left. I have merely take this as an example of what the expense may be. If the shippers are entitled to perform any part of this service I do not think they will hesitate to call upon the carriers in the months of July and August to perform this service when the cost of performing it is great and when there is greater danger of deterioration.

Mr. Mayer: If you do not make any profit on refrigeration and we cannot make any profit on refrigeration, why do you charge this $30?

Mr. Durbrow: I will be glad if the Commission would extend my time half an hour to answer that question. I would like to talk about that, because I am just getting warmed up. However,
321 I only have two minutes left. In that two minutes I want to discuss one or two matters.

I will not take up any of my precious time to compare these rates. Mr. Norton is loaded for bear on that. These gentlemen are going home on the first train after Mr. Norton gets through with this thirty dollar charge.

I am just saying what we have left, that is, $16.08, after we pay for the ice, and I am saying that out of that we have to pay for precooling, we have to pay for pre-icing, and for constructing the machinery of these plants, and these other charges incidental to the refrigeration service.

We are entitled to something for the transportation of the ice, we are entitled to something for the extra depreciation of equipment, as your Honors found in the Florida case, and we are entitled to something for the inspection service. I say that that proves the charge is reasonable.

Commissioner Prouty: What inspection service do you render in the case of the refrigerated shipments that you do not render in the case of the ventilated shipments?

Mr. Durbrow: We examine the vents to prevent floods—that is the principal inspection.

Your Honors must also remember that when a shipment
322 moves out from point of origin to final destination, we must maintain inspectors all along the line to inspect these cars and see that they are, so far as the refrigeration devices are concerned, in perfect condition, because we are chargeable with any damage that might result by reason of the refrigerating devices falling into ill repair somewhere in transit.

I want to call your attention to another very, very important fact to justify the reasonableness of these rates—however, I see it is five o'clock. Shall I close now, your Honor?

Commissioner Prouty: Oh, you may have five minutes longer.

Mr. Durbrow: Thank you.

I call your attention to the fact that the rate to Chicago, for instance—I am merely using that as an illustration—was originally $75, and has been reduced to $62.50. From 1903 to 1910, the rate has been reduced from $7.50 to $12.50, the minimum has been increased from 24,000 pounds to 32,000 pounds, and the ice bunkers have been increased in capacity from 9,000 to 10,000 pounds. If the rate has been reduced from $7.50 to $12.50 from 1903 to 1910; if in the same time the bunkers have been increased in their capacity from 9,000 pounds to 10,000 or 11,000 pounds, and if in the same time the minimum has been increased
323 from 24,000 to 32,000 pounds, it follows by unanswerable logic that the cost to the carriers for performing that service is greater than it has been in the past and nevertheless there has been a reduction in the rate.

There is just one more point I must bring to your attention, and

that is a very important point. They talk about these shipments having to move forward to destination and it requiring so much ice in transit. This shipment record in the case shows the temperature of their shipments arriving at destination was from 60 to 75 degrees, with from one-sixth to one-half the ice in the bunkers, whereas our shipments arrived at destination with a temperature down to the proper carrying capacity. The reason it requires ice in the matter of pre-cooling and pre-icing was explained by Mr. Gay when he said that where there is a higher temperature on the outside than on the inside of the car, more ice is necessary, of course, to maintain the low temperature inside of the car, and Mr. Commissioner Prouty said at the hearing:

"It is of course true that it takes more ice to get the temperature of a car down to 42 degrees and keep it there than it does to 60 degrees."

Mr. Gay explained how there was a certain heat in the oranges and that they require a certain amount of ice to bring the
324 temperature of the car down, and when the temperature on the outside of the car is about the same as the temperature on the inside of the car, it would take less ice than when the temperature was high on the outside; that in the latter case there was more necessity for refrigeration, because——

Commissioner Clark (interposing): We take judicial notice of the fact that heat affects ice.

Mr. Durbrow: Thank you. If you do, I think I will stop and submit the case without further discussion.

(Thereupon, at 5:10 o'clock, p. m., the Commission adjourned until tomorrow, Friday, December 9, 1910, at 10 o'clock a. m.)

325 *Second Day.*

FRIDAY, *December* 9, 1910—10 o'clock a. m.

Present: Commissioners Knapp (Chairman), Clements, Prouty, Cockrell, Lane and Clark.

Present also Mr. Mayer, Mr. Call, and Mr. Matthews, for the complainants.

Present also Mr. Norton for the defendants.

Argument of Mr. T. J. Norton, on Behalf of the Defendants.

Mr. Norton: May it please the Commission: In the former argument in this case you requested us not to give attention in the oral discussion to the subject of refrigeration, although we had considered it pretty fully in the trial of the case and had written it up more or less at length in our briefs: so that when it came to the writing of our brief on the supplemental hearing, I presented
326 nothing that was treated before. Up to that time we had a pretty thorough consideration of the pre-cooling and the pre-icing and refrigeration subjects, up to the time of the tests, so that in the supplemental brief which I have prepared and which counsel

referred to as voluminous—although it is within forty odd pages as against his one hundred and fifteen—I have referred to the pages in our original brief where this subject was discussed up to the time of Commissioner Prouty's test, and I ask you to read those few pages in the other brief in connection with this, and consider both together in case you should find time in your multifarious duties to read any of them.

There are two contentions made here by the complainants. One is that the thirty dollar charge is arbitrary and unwarranted and without service. The second is that our standard refrigeration charge is about one-third too high. In addition to that, there are some collateral contentions which are of some importance because of the impression they might make upon your Honors' minds in the decision of these other two points. I shall address myself chiefly to those two points, and just as rapidly as possible.

Up to July 6th, 1909, the standard refrigeration charge—standard refrigeration meaning the bunkers should be filled with
327 ice at point of origin and kept filled with ice until arrival at point of destination—was $60 to Kansas City, $62.50 to Chicago, $72.50 to Cincinnati, Pittsburg and Buffalo, and $75 to New York. These cars start over the Santa Fe at San Bernardino, that being the assembling point. They are brought in within a few hours after loading, for the purpose of assembling, and leave at various times toward midnight and along toward morning, train after train.

Up to this time the charge for this sort of refrigeration was $60 to Kansas City, $62.50 to Chicago, $72.50 to Cincinnati, Pittsburg and Buffalo, and $75 to New York. At the date mentioned, a special charge was made to these people who had established pre-cooling plants where they would pre-cool their fruit and fill the bunkers with their own ice. We would take those cars under the new tariff, which was put into effect at that time, and take them to destination for a thirty dollar charge. The Southern Pacific at that time had a $55 charge for cars which it would pre-cool and pre-ice and re-ice subsequently and take to destination. The Santa Fe did not have at that time its plant in readiness. In addition to that, the Santa Fe had a charge of $7.50 for putting cars, with the bunkers pre-iced, at the plants of the growers.

328 That question was raised yesterday by one of the Commissioners, as to whether they could pre-cool their fruit and then put it into our iced cars. I will pause at this point to answer that question in the affirmative. We will deliver the cooled cars to them, so it is not necessary that they put their pre-cooled fruit into hot cars.

Commissioner Prouty: Let me ask about that, Mr. Norton. It is essential that when these cars start on their eastern journey, that the bunkers be filled with ice and the cars sealed up carefully. If you delivered the car with the bunkers filled with ice, before the car is loaded with fruit, the ice is partially melted. In what way would you suggest the bunkers should be refilled with ice so the car will go through under the pre-cooling system?

Mr. Norton: The bunkers would be refilled at San Bernardino, and that is the practice, as a matter of fact, in the few cases that have occurred. The rule is to fill the bunkers at every icing station.

Commissioner Prouty: I understand under this system they want them to go through and claim they have gone through without being refilled at all, provided they are filled at the start.

329 Mr. Norton: I make this remark only to the proposition, that they must do this pre-cooling themselves: I should say the bunkers would be replenished at San Bernardino, and then started forward.

Commissioner Prouty: What do you say the charge is for filling the bunkers with ice before the car is placed?

Mr. Norton: $7.50.

Commissioner Prouty: And the additional charge would probably be for two more tons of ice at San Bernardino?

Mr. Norton: I suppose the whole job will be done for $7.50.

Mr. Call: That is in addition to the regular refrigeration charge.

Mr. Norton: Yes.

Commissioner Prouty: But I am trying to get at the putting of the ice in the bunkers by the railroad company, if it were not put in by the shippers. You can fill those bunkers with ice for less than ten dollars?

Mr. Call: But they charge the full refrigeration rate and the $7.50 in addition.

Commissioner Prouty: I know what they charge now. That is not the point of my question. I was simply thinking
330 whether the objection could be met that all refrigeration would be done by the railroad company if the ice was put in the bunkers by the railroad company.

Mr. Norton: The point was made by Mr. Mayer, in anticipation of the proposition we brought out in our briefs, that they represent ninety per cent of the fruit people in southern California on this proposition. We claim they represent in reality only about two per cent on this subject of pre-cooling. They pre-cooled only 164 cars last year. They pre-cooled at Los Angeles 127 cars, under a special rate we made for the purpose of assisting the Government promologist in carrying on his experimentation.

At this point I want to say the Santa Fe did its share, and I think the Southern Pacific did too, in the working out of the experiments that have been worked out by the Government of the United States. In the course of this case reference was made two or three times to the wonderful things the Government did. Among the things we did, aside from constructing, at a cost of about $20,000, the San Bernardino pre-cooling plant similar to the one which they operate now, we made this concentration rate into Los Angeles, and they made great use of it from the fact that in their private plants
331 they pre-cooled and pre-iced only 164 cars, while they took care of 327 under this special privilege.

In their private plants they pre-cooled and handled 164 cars, and on the Santa Fe alone there were 6,980 refrigerated car-loads; so

the representation of these people here in this contention stands at 164 to 6,980.

Furthermore, at this point I may mention the meeting held at Los Angeles, already referred to, which was attended by President Ripley.

After these experiments made by ourselves, by our own ice man, Mr. Maginnis, with a plant of our own at San Bernardino and in collaboration with the Government experts, we determined, upon the request of the shippers, to construct a pre-cooling plant at San Bernardino, where a trainload could be pre-cooled and pre-iced at one time. After the matter had been fully canvassed by our company, under the direction of Mr. Ripley a pre-cooling plant was ordered, and a contract was entered into and the machinery was about to be shipped from Milwaukee to the coast, when Mr. Story, the President of the organization which is in litigation here, and Mr. Woodford, the General Manager, went over to Santa Barbara, where Mr. Ripley was spending the winter, and told him the peo-
332 ple themselves wanted to cool, that they had these plants and wanted to do their own pre-cooling, and the companies would please not do it. Mr. Ripley called for Mr. Maginnis, the man who was to build the plant, and Mr. Hodges, our general purchasing agent, and brought them to Santa Barbara, and they canvassed this matter, and on representation made by Mr. Story, Mr. Maginnis was told by Mr. Ripley to cancel the contract and by telegraph to prevent the shipment of the machinery.

This was heard of by the people in southern California, and they called a mass meeting at Los Angeles, and Mr. Ripley went over from Santa Barbara to attend that meeting. The spirit of that mass meeting was that this was a common carrier obligation which the common carrier must perform; that "we are not in the pre-cooling or icing business, and we shall hold you responsible for taking care of this fruit." That was the spirit of the discussion, and Mr. Story admitted it to me, and it is in the record and referred to in the briefs.

Mr. Call: I do not think that is a correct statement of the situation. The record does not bear you out in that.

Mr. Norton: In what particular is it erroneous?

Mr. Call: The full record of the meeting is before the Commission, and the meeting asked the privilege of pre-cooling and pre-
333 icing cars without a dissenting vote. The record shows that here. That is the only record of that meeting.

Mr. Norton: Did Mr. Maginnis, who was present at the meeting, testify to that?

Mr. Call: We had the record of the meeting, and Mr. Maginnis testified to the contrary.

Mr. Norton: You did not have the record of the meeting. I have it in my notes to comment on that, and I might as well do so now.

It was a travesty of a record. The record was written up the following morning by Mr. Woodford, who was not present there. Mr. Woodford was not at that meeting, and he made a memorandum

of what took place at the meeting the night before, and he did not attend the meeting. We objected to the introduction of that, and still object. He made it from what Mr. Story had told him happened the night before. This was a pronunciamento of the people, the people that they are trying to represent and whom they do not represent.

Mr. Maginnis was present at this meeting and testified to what took place, just as I have stated it, and near the close of the meeting President Ripley catechized Mr. Story for having gone to San Bernardino and said what he said. Mr. Story was put on
334 the stand, and I made him admit, and he did it freely and honestly, that Mr. Ripley had catechized him and asked why he had gone to Santa Barbara and said the people wanted to have their own pre-cooling plant, and he answered that he did not know the temper of the people when he went there and had not found it out. After that meeting and after the expression of the public there, Mr. Ripley ordered that the plant at San Bernardino be constructed. That is the story of that.

Commissioner Cockrell: That cools the cars with the fruit in them?

Mr. Norton: Yes, sir; that cools the cars with the fruit in them, and cools a trainload at a time, thirty or more cars at a time. We can cool over 200 cars a day there, at that plant. There is a large cold air stove-pipe, so to speak, which fastens on to the ventilators that you have seen at one end of the car, and goes down through the car and out the other end. We sweep, at a very high rate of speed, this cold air through the car. They have a way of reversing it and sending it in both directions or in the opposite direction. In a certain time the temperature is reduced sufficiently.

Commissioner Clark: After the car is loaded?

Mr. Norton: After the car is loaded. They bring them in from the country and cool them a trainload at a time. That
335 plant has cost us over five million dollars——

Commissioner Prouty (interposing): Over what?

Mr. Norton: Over five hundred thousand dollars, I should have said.

Mr. Ripley stated specifically at that meeting, "If your money is going to be spent, ours will not be. Do as you please about that."

Mr. Call: That is all wrong. You are misinformed. That is all wrong.

Mr. Norton: I have stated this from the record.

Mr. Call: There is no evidence of that.

Mr. Norton: Mr. Maginnis was present, and you have never contradicted his evidence.

Mr. Call: I offered to produce one hundred men to contradict it, and you said one would be sufficient, and Mr. Story did contradict it absolutely.

Mr. Norton: On this dispute we will have to leave it to the record, and let the Commission ascertain. Mr. Story admitted he was catechized by Mr. Ripley—and I used that word particularly—for the report he made over there.

We put up the plant, and we are ready to do business, and to do it for all alike.

336 We come now to the charge of thirty dollars.

I have figured out that I have only forty-five minutes, and I want to get through without asking for any extension of time, if I can do so.

They say this thirty dollar charge we impose for hauling the fruit after they pre-cool it and pre-ice it and order us not to re-ice it, is arbitrary, unwarranted, and for no service. That simply means that we are rendering a box-car service to them. If we are rendering no service beyond the mere rail rate, then they should put their fruit in box cars to be logical. When they admit, as they have to, of course, that they cannot handle this stuff in box-cars, then they admit that they are not entitled to a box-car rate.

Mr. Edwards himself, and Mr. Price both admit that under this thirty dollar charge, which Mr. Chambers testified was an estimate as nearly as they could get at it when they imposed it, they break even; that is to say, they get their goods to the east at about the standard refrigeration charge. Therefore I make the contention that by that testimony they have established conclusively that the thirty dollar charge is just and reasonable and accurate, because it cannot be tolerated that by any manipulation of our com-

337 mon carrier duty they shall get their stock to destination at one cent less than other people pay. So I take that by their own testimony they have proved that when we impose that thirty dollar charge for the service which we render, and when they put their fruit at destination on a parity with the man who pays our regular standard refrigeration charge, or pays any charge for going to our house, they have proven beyond all question the absolute correctness of the thirty-dollar charge. It seems to me that is just as demonstrable as anything you can find in your geometry.

They have testified and it has been stated here that there is some preference—although they did not produce any correspondence to show it—for the pre-cooled fruit, among customers. They have a right to any preference which they can get from what they have to do. They can put up their fruit in the highest, most improved methods, and get the benefit of that in the market. But they have no right to any benefit or advantage over any competitor out of what we do. There is the logic of it.

That is the point I want you to keep in mind. The sole purpose of this litigation is to get that advantage, to get what elevators get, to get what tap-lines get, to get what all these

338 trackage outfits get. That is the gist of this proceeding.

I take it that they themselves have absolutely demonstrated the absolute correctness of this charge, this thirty dollar charge, because it allows them to break even, and that is all the law allows them. As I understand, the interstate commerce law was enacted for this purpose, so these people and all other people would break even, to use the apt and forcible language of Mr. Edwards himself.

Mr. Call: You admit we can do it that much cheaper than you can do it.

Mr. Norton: No, I do not admit any such thing. I am going to show you cannot do it. I am going to show by the figures you cannot do it and have not done it for the price you say, and I argue from those figures you are never going to build another plant in southern California, no matter what the Commission decides.

The great facts which they have lost sight of here when they talk about this being a charge for no service, are that we have created here in the United States an enormous establishment. They try to take the cars out of our establishment. They cannot ship their fruit without this peculiar and particular car. They
339 have no more right to take that car away from our establishment than they have to take a room away from a house and refuse to pay the whole rent because they occupy only the one room.

We have this establishment throughout this country, and it is maintained for their benefit. Mr. Edwards would not admit that we might abandon this plant. No, there are times when he wants it. Mr. Story would not say that weak fruit would ever go through without re-icing in transit. Therefore, the testimony of Mr. Story is that we must maintain this establishment. There was not a witness who would say that so far as their pre-cooling and pre-icing and non-icing was concerned, that we could wipe off this slate as to them.

They insist that the plant must be maintained, and therefore we answer, "You must pay your part of it, and when you attack an unfavorable season like this, in the early months of the year, when you close down your plants in June, in early June—Mr. Edwards closes his plant, and the other plants moved only twelve cars, I think, in the whole month of June—when they have a year like that, and ask for this service in that year, and that we still maintain our plant for their accommodation in times
340 when the fruit is weak, the logic of it is that they want other people to maintain this plant for them, and Mr. Commissioner Prouty said, "If you go on with this pre-cooling, as you propose, and you complain about the Santa Fe charge for ice at San Bernardino, the Santa Fe may have to charge you ten dollars a ton for ice instead of what it has been charging." The burden will be saddled upon the people taking standard refrigeration, because we must keep this up in its entirety.

My argument is, in the first place, that they show themselves the thirty-dollar rate is right, and if there is any question about that, the absolute necessity for the maintenance of this establishment is shown, it seems to me, beyond all question.

Commissioner Cockrell: You put ice in the cars now when they are shipping oranges at this season of the year, this kind of weather, do you?

Mr. Norton: No; they begin that in April, I think.

Mr. Mayer: March or April.

Mr. Norton: And from that time on during the rest of the year. Some of them do not use ice at all. Mr. Chase, of Riverside, one of the largest producers over in the Riverside district, has a very heavy acreage, and he never uses any ice at all and says
341 it is unnecessary.

Mr. Mayer: Why don't you have him use the other car?

Mr. Norton: For what?

Mr. Mayer: The ventilator car.

Mr. Norton: We use the ventilator car for our own business. It is cheaper to carry by that car than to have to set the refrigerator car for the refrigerator shipments.

Mr. Mayer: Why don't you charge him twenty dollars a car and let him contribute too?

Mr. Norton: He is not using our devices at all. We furnish him that just as we would furnish a baggage car if we were short of equipment. We prefer not to buy the ventilator equipment, and we may, therefore, for our own behoof, use that equipment if we please. What we do in that respect is not the basis of what they have a right to demand. That is our explanation of that. Since you ask that question, I think it ought to be thrown out here that well-handled fruit will stand up, Mr. Chase says, almost indefinitely and is not in need of refrigeration at all.

By the way, Professor Powell, the Government pomologist, in all his researches and all the reports he has made, has never said a word of criticism against the service of the railway com-
342 panies. All the instructions he has given have been about the way the growers handle their fruit, the way they pack it and cool it and prepare it. We are told, by people competent to judge, that there is not a refrigerator system superior to ours in this country.

It was a mistake, in the first place, for this thirty dollar charge ever to have been allowed. It was a mistake that they ever allowed them to get on our own cars to fill the bunkers. It is one of those things that freight men do, whose ways are sometimes past finding out; but it would be explained in the southern California case by the fact that, as the Chairman and some of the other Commissioners know, we have worked in California with these people from beginning to end in the remarkable development of that business. They stated yesterday they will have 50,000 carloads in a little while, and in everything that has been done to cause a forward movement, we have joined with them; but this was an absolute mistake. The Commission should determine that it was a mistake, and that we should not farm out our common carrier obligations.

The carriers are prepared, by means of this pre-cooling plant and pre-cooling system, to pre-cool shipments and handle them any way they want to. It is up to you to say for what prices
343 they shall be handled, but we are prepared to give to all shippers alike the highest refrigeration service that science has brought forward down to this time. We have prepared at great expense to do this. If there is any merit in pre-cooling and pre-icing, our claim is it ought to go to the smallest man as well

as to the largest. These people have money to put up plants; the smaller people have not. If pre-cooling is to be the practice in California, as it will be, because we are ready to do it, then it should be spread upon the entire industry and all should get the benefit of it.

Commissioner Cockrell: How many hours do you keep your cars in the refrigeration?

Mr. Norton: Quite a long time, about three or four hours.

Commissioner Cockrell: You could keep them a little longer?

Mr. Norton: Oh, yes, they could be kept longer, and the fruit could be cooled slowly. I am coming to that proposition presently—well, I may as well take it up now.

The claim that these boxes of fruit ought to be slipped right out of the packing room and into the cold air is answered by the remark I made a while back about Mr. Chase, who said it does not have to refrigerate at all if it is well handled fruit. Mr.
344 Story said there had been no decay in that country for three years. They have not been slipping all the boxes in that country into the pre-cooling rooms during those three years. The logic of that is that fruit does not decay because of our defective refrigerating method, as Mr. Mayer suggested yesterday. He said previous to the establishment of these plants there was heavy decay. Mr. Story said there had been no decay at all for three years. Mr. Chase, of Riverside, said, after putting into effect the advice of the Government pomologist to handle this fruit like eggs, his decay fell off from forty per cent to nothing. That is all there is about decay. In the last three years, Mr. Story says, the decay is absolutely nothing relatively, and still that came to pass without these boxes going so rapidly into the cooling room.

Mr. Mayer: Why do they pay for seven thousand cars of faulty refrigeration annually?

Mr. Norton: I turned down a ninety thousand dollar claim a short time ago because I thought it was not fair, and I do not know what had been paid. They put up $45,000 against our company, which I told them not to pay. We are going to do this thing according to law.

If it is proved by their own witnesses that there is abso-
345 lutely no decay when these boxes do not slide so quickly into the cooling-room, it seems to me a complete answer to all that kind of talk.

I have already answered Mr. Mayer about why we do not charge a man for the ventilated cars.

They say their right to climb on to our cars and fill the bunkers with ice is admitted by our tariffs. We cannot admit anything by our tariffs; that is to say, we cannot create a legal right on their part by giving a rebate or doing anything else we may do as a confession. They have no right to get on our equipment. It is our duty, under the decisions of the Interstate Commerce Commission, to take care of this fruit. It is just a question of whether we will farm it out or not. If we want to farm out that duty under their supervision, that is one thing; but whether we refuse to do it is quite

another thing. It is absolutely wrong in principle and wrong in practice to begin farming this out. It reminds me of a line in catechism which I studied as a child—to avoid the occasion of error. They ask you to keep away from places where there are pitfalls and quicksands. They come here asking you to prepare this ground for them to get into, and for the things to spring from such as
346 have sprung from trackage companies and elevator companies and others.

Another thing it seems to me you ought to consider is that the business should not be hampered by several kinds of service. They say we are taking up the cudgel for the poor shipper. We are doing nothing of the kind. We are doing just what the law requires us to do. The poor shipper was not present in this litigation, because he attended to his case in that meeting where Mr. Ripley was.

Mr. Mayer: Where is your poor shipper outside of this case??

Mr. Norton: You represent only a small portion.

Mr. Mayer: We represent ninety per cent.

Mr. Norton: You represent 147 carloads against over 8,000 carloads.

Mr. Mayer: Did we not represent over ninety per cent in this petition?

Mr. Norton: On this point I say you represent 148 carloads against over 8,000 carloads.

The poor shipper went into that meeting and took care of himself, and has no place here. They had no shippers——

Commissioner Lane (Interposing): I think we must deal with this case as if Mr. Call represented the orange shippers of California, the small shipper as well as the large shipper.

347 Mr. Norton: The question is not here for the large shipper. I say we represent the small shippers. That is the point I am making. The small shipper appeared at that meeting, before we expended this money for him, and your remark goes right to the point I want to consider, that this thing should be given to them all by one instrumentality, and not by two or three. There should not be pre-cooling and pre-icing by the shippers, and standard refrigeration by us, and pre-cooling and pre-icing and re-icing in transit and pre-cooling by us, and pre-cooling and pre-icing and not re-icing in transit by us. There are four sorts of services that would arise out of this, and the thing which you have to consider is the interest of all, and the thing which we have to consider is the interest of all.

It is extremely important that there should be one service here at some price to be fixed by the Interstate Commerce Commission, and to be furnished by the party appointed by law to furnish it. We are ready to give that to all alike, and we are prepared to give the highest service. The talk that we cannot give it is answered by our adversaries themselves. After saying that we cannot get it at the right temperature and cannot heat it to the center of the
348 fruit, and do not reduce the temperature low enough, then they turn around and say they will build no more plants if

we will do it at the right price. Mr. Call admitted to the inquiring Commissioner that we could do it if we would. If we can, we will. You cannot say we are not going to do that right if we prepare to do it.

We have been doing it right along, and we would have done it during this investigation if you had not put out an order forbidding it on the part of your clients. We carried through our plant a great many carloads, and there has not been a word of complaint about them, but just before this Commission's tests started, we were notified to put none of the business of these organizations through—these organizations which in that respect represent ninety per cent of the business or fifty or sixty per cent of the business, sixty per cent I believe it is—we were notified that none of that business should come through our houses, and we might have given the standard refrigeration.

Mr. Call: We did not want you to put a blast cold enough to heat 37,000 pounds of fruit on our fruit at our risk. That is the reason I objected to it.

Mr. Norton: We are an insurer all right. If they had let their people alone and let them put their stuff through our houses,
349 we would know at this time and would have the record before you as to what sort of service we can render. As I say, outside of the organizations, the people let their fruit through our houses, and the results were absolutely without any question.

On the point that we do not lower the temperature sufficiently, the man who put up our plant, a scientist on the subject of refrigeration, testified what everybody will recognize in a moment is correct, that ice will hold fruit at only about forty-two to forty-five degress. Therefore, when you pre-cool it, you should not reduce it below the ice power. When you do reduce it below the ice power, and it goes out on the road and rises to the ice temperature, it is just like the water pitcher illustration Mr. Durbrow spoke about yesterday.

They claim it is essential to have this very low at the start, but it has gone up all the way across the continent, until they get it as high as seventy degrees at times. If low temperature is so important in the beginning, why not at the end?

Professor Powell showed, and I have it in an exhibit here marked "Powell D," that the car-loads that were pre-cooled and pre-iced and re-iced were absolutely uniform clear across the continent.
That is the service, and this test here shows that is the way
350 to handle it. Probably we can put in less and less ice as we grow up in this business, and give them the benefit of it; but there can be no hard and fast way of handling this.

They claim to have followed some cars to find out how much ice would be put in to the bunkers; but five of them were delayed by washouts, others were lost track of, and their examination amounted, in my opinion, to nothing. That shows the difficulty that confronts us in the practical handling of this fruit—that we must have a system that will meet all conditions, because no matter how well handled a road may be, trains will be delayed and there will be washouts.

These tests were made in a year when we performed the highest service we ever did. We delivered this fruit all last year under schedule time, as a rule. The test was in the last week of April, the last week of May, the last week of June, and the last week of July; so that so far as the test is concerned, the very hottest weather was not tried out. They got to destination, many of those cars, all of them with higher temperature, much higher than the temperature with which they left point of origin, some of them as high as seventy degrees; but they all got to destination and many with very little ice in the bunkers.

351 Formerly they preferred claims against us for damages on shipments when the bunkers were less than half full. One of these bunkers had less than one hundred pounds of ice in it. It stands to reason if you keep the bunker iced all the way, the fruit will arrive in good condition.

I must hurry along and call your Honors' attention to two or three facts in the test.

So much for the arbitrary charge of thirty dollars.

Commissioner Clements: There is just one point—I asked the question yesterday and did not get a very clear answer from anybody—that is running in my mind.

If it is lawful for the growers to assume this and relieve you of it, and they can, as a practical matter, pre-cool and pre-ice and seal the car up and let you take it without responsibility as to refrigeration or anything of that kind, no matter if it might be most convenient to have it all done at one place or one way, is there any law under which you can resist their right to have it done that way, if they can lawfully take the responsibility off of you?

Commissioner Lane: Is not the Covington Stock-yards case principle involved in this case?

Mr. Norton: I do not recall the case by name. What was the point?

352 Commissioner Lane: I will send for it and let you see it. It was on the proposition that the carrier has the right to provide certain facilities, and that the full use of those facilities can be made by all shippers, but that it cannot be required to allow traffic to go on to another track for use of other facilities and thereby take away from it the use of the facilities that it has provided.

Mr. Norton: I was going to make the answer to Mr. Commissioner Clements that it seems to me absolutely unquestionable they cannot take our equipment out of our hands for any purpose. They have no legal right to do it.

Commissioner Clements: I do not know the practical way in which this thing is done, or how the thing connects up, the loading of the car and the pre-cooling, with the subsequent refrigeration, and my question was based on that.

Mr. Norton: Do you not understand clearly just how it is handled?

Commissioner Clements: I do not, but I will not ask you to take your time to explain it here, because the record will show that and I do not care to impose upon your time.

Mr. Norton: Mr. Mayer's statement was so full yesterday that I undertook to make no statement at all.

353 They simply have their plant out in the country, where they put up the stuff; they bring it in and box it up, and shove it into the storage room. We send out a car, and it is set in to be loaded with these cooled boxes, and at the same time they put their own ice in the bunkers. We go after it again, and assemble it in trains.

Commissioner Clements: They have not taken possession of your car in that way, have they, any more than any other loader of carload freight?

Mr. Norton: Yes. The other carload man occupies the space he buys. These people have occupied the space they buy for transportation purposes with their fruit, and in addition to that they occupy a peculiar device which forms a part of our equipment, and have taken possession of that part of our equipment.

Commissioner Clements: You mean the bunker?

Mr. Norton: Yes; something on which we have a right to earn money, although we do not in this case.

The Chairman: If I may take a moment, Mr. Norton——

Mr. Norton: Certainly.

The Chairman: Let me try to get some understanding of the questions involved in this case. From the argument, it

354 occurs to me that any service incidental, such as loading or handling, which the carrier is bound to perform, is a service which the carrier may insist upon exclusively performing.

Mr. Norton: Certainly; that is my point.

The Chairman: This is the question which I would like Mr. Call to discuss a little for my benefit: Take a service of an incidental character, which the carrier is not bound to perform, but may yet lawfully perform, if the carrier undertakes to perform that service may it not insist upon the performance of it exclusively?

Mr. Norton: I will answer that in the affirmative.

Commissioner Lane: Is not the carrier bound to perform this service?

Mr. Norton: Oh, yes. That is decided by your cases, and by custom. There was some question about it some years ago, before you came upon this bench, but I have always insisted, since I have been with the company, that we could not deny we had to furnish this refrigeration.

Commissioner Clements: Are the carriers bound to pre-cool?

Mr. Norton: Oh, no, but to refrigerate.

Commissioner Clements: If you take your car and your bunkers, and fill your bunkers yourselves, is not that the carrier's service separate and apart from the pre-cooling?

355 Mr. Norton: Oh, yes.

Commissioner Clements: Why is it not possible to separate the pre-cooling from what transpires afterward?

Mr. Norton: From the subsequent refrigeration?

Commissioner Clements: Yes.

Mr. Norton: It is. We have no objection to their pre-icing, any

more than when they pre-ice a box of fish. People do that right along; but they have no right to take a part of our equipment out of our hands, take a part of our service out of our hands, and manipulate it, and through that get a rate which Mr. A, who pays our standard refrigeration charge, may not get.

Commissioner Clements: Of course you are entitled to a fair charge for the use of your equipment, and for your service; but can you say that in such way as that they must be compelled to have you do that which they say is their duty—the pre-cooling?

Mr. Norton: No, they can do their pre-cooling if they want to. People put apples in cold storage, and we haul them in exactly the same way. We take apples at various points along our line that have been stored under ice for months. They put them in the car.

356 and we fill the bunkers and handle them in the same way

Mr. Mayer: You would refuse the right to put coal in a stove for shipping potatoes from Maine to New York. Could we not put coal in a stove when we build the car?

Mr. Norton: That is too academic to answer.

Mr. Call: For Mr. Norton's benefit and for the benefit of the Commission, I say that our position is that their duty to refrigerate only arises when they are called upon to do it. That duty does not arise until called for.

Commissioner Lane: Are they compelled to maintain a plant under which they may be required to refrigerate one car and let a thousand cars go past that the shipper has refrigerated?

Mr. Call: That is the same as the ventilation proposition. The fruit man requires refrigeration, and yet they have the plant.

Mr. Norton: That shows the difficulty of keeping up our own plant. In some years we have refrigerated as high as sixty per cent, and other years only thirty per cent. We have to buy our ice, and we are under enormous expense, and we do not know what is coming. It ought to be spread over the entire traffic, all

357 alike, and we are ready to spread it and we have the thing to do it with.

Mr. Call: You know better what is coming under this plan than under ventilation. Ventilation depends on the season.

Mr. Norton: I am going to hurriedly run over the second point they make. My time is already up, but I am almost through.

They say our standard refrigeration charge is extortionate. In answer to that I refer you here to the Tenth Interstate Commerce Commission report, at page 611, where, in the consolidated forwarding case the Commission said:

"In view of the reduction in the refrigerating charges since the first hearing of these cases, and the insufficiency of the evidence as to the cost of icing the cars, we do not feel justified in condemning the present refrigerating charges as unreasonable."

Since that time, Mr. Chambers testified, we have increased the minimum, but we have not increased the rate.

In the strawberry case I refer you to 6 I. C. C. R., and also to the 14th and 17th I. C. C. R.; also to the refrigeration case. In the cases from the south you have allowed for shorter distances in

reality a much better refrigeration charge; $86.40 in these
358 truck farmers case from the south up to New York.

Commissioner Lane: But the Northern Pacific has a refrigeration charge of $45 from the Willamette Valley into Chicago, I think.

Mr. Norton: The Northern Pacific has no such country to go through in the matter of consuming ice. During the season in which the largest part of this fruit moves, we have a terrible heat to go through for a long time in crossing that desert country.

Mr. Call: You do not use much ice, though.

Mr. Norton: There is a great deal of space given in their briefs to computations and calculations as to what is chargeable to the rail rate and what is chargeable to the refrigeration rate, etc. We never have separated these, any more than I can separate the two fingers on my hand. They stand apart in one way, and are absolutely inseparable in another way.

Referring to our pleading in the injunction case, anything that was said in that case—I have not taken the time to refresh my memory on it—was as to the value of the service to these people. We set up the number of things we do in the matter of diversions, and in the matter of this establishment we have, and the thou-
359 sand other things we do—the telegrams, for instance, which we send for their benefit and behoof. There is no disparity between what we said there and what we contend for here. We insist upon the two rates being kept together, because both go into the Santa Fe's pocket.

After all their computations, they come down to the statement shown by our exhibit, that in the last year, we made $17.33 a car above the cost of the ice which we bought and put in the bunkers—and that, it seems to me, answers all their objections.

Mr. Call: Their objections, you say?

Mr. Norton: Yes.

Mr. Call: Yours, you mean, not ours.

Mr. Norton: Yours, yes.

Mr. Call: That was not our objection. That is your objection. You are mistaken on that.

Mr. Norton: You misunderstand me. They concede that the difference between the cost of our ice and what we get out of the refrigeration amounts to $17.33.

Mr. Mayer: Oh, no.

Mr. Norton: That was so stated in the brief.

Mr. Mayer: No, sir.

360 Mr. Call: You are mistaken on that. We say that is your figure.

Mr. Norton: There is no dispute on that.

Mr. Call: Certainly there is. We used the Commission's inspector's figures, and you used your own.

Mr. Norton: During this test?

Mr. Call: Yes.

Mr. Norton: I am not talking of the test. I am talking of last year. I am not speaking of any particular period except the year.

We put in the exhibit, and I think you accepted it—I am correct about it. I am careful in my statements of fact. The difference between what we paid for ice in the preceding year and what we got for refrigeration amounted to $17.33 per car. I say that simple fact answers all that can be said about our extortionate charge, and all that can be figured out in a week's time as to what is in the rail rate and what is in the other rate, or what the carrier ought to get. $17.33 is all that is left for the establishment which costs us about $50,000 a year to operate.

Mr. Mayer: Your contention is you only make $17 on the ice?

Mr. Norton: Certainly, $17.33 meet all the things we have to meet.

361 Mr. Mayer: Why do you charge us $30 per car arbitrarily?

Mr. Norton: I explained that at the beginning of my argument, and I do not think we charge it arbitrarily. I think I made it clear why we charge $30 for the use of this car—because, as your men say, they break even; because you have no advantage over your competitors; and that is sufficient reason in itself regardless of any service you might render.

Mr. Mayer: If you only make $17 when you refrigerate, why charge us $30 when we refrigerate?

Mr. Norton: I will let your own witnesses answer that question—because you break even.

Commissioner Lane: What do they mean by "breaking even"?

Mr. Norton: They get their goods to destination at exactly the same rate as the man who pays our standard refrigeration charge.

Mr. Call: The shipper does it enough cheaper so he can pay the $30 charge and meet their refrigeration charge.

Mr. Norton: They are in the same position in the market that their competitors are. That is the milk in the cocoanut in this case. That is the whole question before us.

I think, without any computations, it is enough to say we get $17.33 per car to pay for everything besides the ice. You

362 will guess in a moment that when Mr. Chambers testifies this refrigeration charge was put at cost, as nearly as it could be ascertained, on the order of President Ripley, he testified the truth. There are years when our operations in this business do not pay for the ice.

One word on our cost of ice. They called for all of our ice contracts, and they were going to show what a loop we had in this. We presented the contracts as fast as they called for them, and Mr. Commissioner Prouty said unless they made some showing about our contracts, it would be understood the ice that we furnished was furnished at the lowest price. The attack on the contracts has entirely disappeared, except that at San Bernardino they think and Mr. Commissioner Prouty thought perhaps our paying four dollars a ton for ice was rather heavy; but they paid themselves three dollars at Uplands to an ice company which put the machinery into their plant and which is interested in the institution. They paid $3.25 at Pomona. We made that contract in the early days——

Mr. Call (interrupting): You are mistaken on that.

Mr. Norton: $3.25 at Pomona.

Mr. Call: No. It is $3, and when they use over 700 tons, it is $2.50.

363 Mr. Norton: It is $3.25, and they never used 700 tons, so they pay $3.25, as I have it, right over near our plant. We went in there as a pioneer, and we got a man to build this plant and invest his money there, and of course we had to make a more favorable contract than would be required today; but he went on the stand and testified his contract is now about to expire, and that we wanted him to renew it for $2.85, and he refused to do it, because he could not do it for less than $3.40. Our ice contracts are practically eliminated. We are furnishing ice at cost. Mr. Leeds, the manager, has the right, when the Santa Fe does not furnish ice satisfactorily, to go into the open market. Our contracts are wide open, and have always been open to the Commission.

They make comparisons as to what is done in other particulars. That leads me to the point that in the east every town has its own ice plant. The selling of ice to a railroad company is a secondary matter; while on our line, through the desert, there is no ice plant until we create it. The conditions in the west and the cost in the west cannot be compared with the eastern conditions and costs.

I think I have said enough about their claim that they must pre-cool. I want to call the attention of the Commission to these
364 figures. Mr. Edwards testified his plant cost $60,000. This explains why you will never build another plant and why you cannot do this business. Mr. Edwards testified that his plant cost $60,000. In three years he has pre-cooled only three hundred car-loads. He pre-cools only his own. They take care of themselves. The man who cannot have a plant is at their mercy or left to do what he can. In three years he has pre-cooled about 300 carloads. He said he could do that at five cents a box. That would earn him $6,700. He said he could get his ice for $2.50 a ton, which would be $4,250. That would be $11,000 his plant would earn him in three years. The interest on his investment at six per cent would be $3,600; depreciation at five per cent, which is low, would be $7,600. So that in the three years these two items alone would amount to $22,800. In that three years he has earned less than half of that amount. In addition to merely the items of interest and depreciation, he has taxes and insurance and expenses of operation.

This shows why it cannot be done. We take the position that the plant was originally intended as a cold storage proposition. They have not made a mark upon the surface of this refrigerating
365 ground yet. They cannot get plants enough into southern California to handle these refrigerated shipments.

Mr. Call: Why do you object to the method, then?

Mr. Norton: I am not objecting to that method. You can store them free all you please. Mr. Edwards has the navels, which come in like a wheatfield, all at once, and it is serviceable to him to have the plants there and keep them there instead of moving them all at once. I take it the whole thing is a cold storage proposition, except

to make use of this to bear down our rail rate and our refrigeration rate.

Mr. Dreher admitted the people could not rely upon the private plants. Of course they could not. They have only 162 cars out of their private plant, out of 6,980 cars on our own rails alone, to say nothing whatever of the Southern Pacific.

Mr. Mayer: Three years ago we had none. Your arbitrary charges wiped them all out.

Mr. Norton: One word about re-icing in transit, which they say is unnecessary. Defendants' exhibit No. 59 or 60 was put in by us at the last hearing. I made a note in the brief that the reporter out there forgot to mark it; so I have identified it in my brief. It shows under this test which we made in the month of April
366 that the pre-cooled cars arrived at destination with a temperature of forty-seven degrees. Our standard refrigeration arrived at forty-four degrees. In May theirs was fifty degrees; ours was forty-five degrees. In June theirs was fifty-six degrees; our- was forty-five degrees. In July theirs was fifty-seven degrees; ours was forty-six degrees. These figures tell whose fruit gets there in the best condition. You cannot get around it: We have the most uniform temperature. We arrived there at forty-six degrees, and that is what the experts stated they should start at. That is the carrying power of the ice.

I want to call the attention of the Commission to that right here, that this standard refrigeration has been tried out and is absolutely satisfacory to the great majority of the shippers here. We have tried it, and you cannot order us to put in anything else. We are not obliged to furnish novelties. We furnish what is adequate, and we have done that all these years; so that we cannot be ordered to furnish anything in addition. But we have gone a step farther than we are obliged to go in the law.

On the question of decay I want to call the attention of the Commission to page 26 of my brief. It shows on their cars the percentage of decay at destination was .49, and on ours was
367 .42. We had a lower percentage of decay than they had, which necessarily followed from the temperatures I have given you.

I pointed out once and I want to repeat that this test, made in the fastest time ever made in the season, with the strongest crop ever known, is not sufficient on which to predicate any elaborate judgment by this Commission. We think you should hold that the shipper has not the right to climb upon our cars and fill our bunkers. The refrigeration service, as you have held before, is one we must perform. It is in your province to say that when we perform this service, we shall do it at a proper rate, but that is the end of it. The standard charge we have put in at practically cost. The shippers have admitted we can do this work in a satisfactory way, if we will, and I think you have followed the California question far enough to know we have always done our best and have done pretty well.

I want to conclude this argument by reading this clipping that I put in the back part of my brief from the Pacific Coast Packer, of

October 1, 1910, headed, "Creating a Monopoly?" The article reads as follows:

"Creating a Monopoly?

That Appears to be Trend of Pre-cooling Plants.

368 "W. H. Stewart, of California, Tells of the Situation Affecting Refrigeration of Fruit Shipments—His Extensive Business.

"New York, September 30.—Will Stewart, head of the Stewart Fruit Company, Los Angeles, California, one of the largest independent citrus and deciduous fruit shipping concerns in the country, with offices in every large city, was in New York this week on his annual tour. Mr. Stewart talked interestingly about the Pacific Coast and its great advantages, and said deciduous fruit shippers had an excellent season this year.

"'One of the problems which shippers are wrestling with at present,' said Mr. Stewart, 'is the pre-cooling question. There has been some agitation from some sources in favor of the growers pre-cooling their own fruit. This, however, so far comes from the exchanges.'"

Mr. Call: That is not in evidence.

Mr. Norton: It is a fact I have taken the liberty of putting in my brief, as enlightening to the Commission.

Mr. Mayer: We can manufacture interviews ad libitum.

Mr. Norton: But listen to the man's logic; you may call him what you will.

Mr. Call: We would rather have your logic.

369 Mr. Norton (reading): "We are against this sort of an arrangement and the growers themselves ought to be against it as it is not to their interest nor to the interest of anyone concerned, unless that one is seeking a monopoly. We believe that the railroad companies should pre-cool and ice all cars and should stand responsible for the condition of fruit upon arrival at destination. For instance, if we pre-cooled our own fruit and iced it and it arrived in bad order the transportation company would lay the blame at our door and we would have no recourse for damages, although the fault might lie with the railroad. If an exchange should build pre-cooling plants the cost of that would naturally fall upon exchange members, who are the growers. The growers being assessed for icing, pre-cooling and various other such expenses, would allow the organization to rapidly build up a monopoly at the expense of the growers. The organized growers, through these assessments, from time to time, would find themselves stockholders in ice plants, pre-coolers, lumber business and other things outside of the legitimate packing and shipping business. The growers then would be owned body and soul by the organization, and if they wanted to withdraw

and sell fruit outright on the trees, or saw where they could
370 get more money for them shipping them through a good independent packer, in order to do so they would have to lose their interests in the paraphernalia they had helped to buy, and the investments would be a dead loss. Before they would do this, however, they would keep shipping fruit as directed by the head of the organization, whether the price suited them or not.

"The acquisition of pre-coolers, ice plants, etc., can lead nowhere but to a monopoly, and this is certainly not a good thing for a man who is at the mercy of such a monopoly. I have no fight on with any exchange, but those are my views on the question you ask.

"What we do want is reduction in refrigerator rates to the East and that is bound to come. There is no reason why these rates should be so high."

Mr. Mayer: He opposes pre-cooling.

Mr. Norton: I do not care about that. I am reading about the result that would come from the granting of the prayer here in this case.

We are furnishing standard refrigeration, which has never been found fault with and which absolutely is satisfactory and which therefore cannot be interfered with. In addition to that, we are prepared to offer this service to all concerned and to all alike.
371 I have shown that our refrigeration charge is low indeed.

The Commission should deny the prayer of the complainants here that the arbitrary charge, as they call it, of $30 should be abolished, and also our rates should be reduced. In addition to that, the Commission should not recognize the right of the shippers to pre-cool and pre-ice. We have stated the doctrine, which was stated in the decisions to which I have referred, that it is our duty to furnish this refrigeration either one way or another, however it may be furnished. It is our duty to furnish it and we should be required to do it.

My time has more than expired, and I thank the Commission for their attention.

The Chairman: Shall we hear from you, Mr. Call?

Mr. Call: Yes, if the Commission please.

372 *Argument of Mr. Asa F. Call on Behalf of the Defendants.*

Mr. Call: May it please the Commission, the orange growers of California do not enjoy this perennial controversy with the carriers, and we dislike to appear before you on these different matters with our grievances so frequently; but the conditions are such over there that we are compelled to do it.

The growers of California are confronted with greatly increasing difficulties, all sorts of attack upon the industry by insects and scales and diseases, increasing cost of production and decreasing production per acre, and on top of that we are met continually by the aggressive encroachments of the carriers for increasing rates, so that, as we have shown you before, they are up against the proposition of only

about one and one-half per cent return on their investment on an average; and when they face the increasing earnings of the carriers and the increasing demands of the carriers and the increasing rates that they put upon us, we are forced as a last resort to come to you for relief.

373 In considering these matters I do not want to be unreasonable; I do not want to ask anything of the carriers that is not reasonable. I would not think for a moment of asking these carriers to be consistent, because I know that would be unreasonable, in their different controversies they have before this Commission, and I would not even say they should be required to take the same position in two different cases. But when we have them in this one case, in this same controversy, taking contrary positions, I think we are entitled to ask the Commission to settle which position they shall take and stand on. In this I refer to the suspended items of the statistician of these roads. Mr. Leeds, their manager of their refrigerator lines, admitted on the stand that he had certain suspended items which he could bring to the defense of either controversy, whether it was a controversy over their rates or a controversy over their refrigeration; and these consisted of the compensation for hauling the ice, the compensation of the extra cost of the refrigerator car, and the expense of hauling an extra heavy car and generally speaking, the service which is afforded to this industry, the extra service over and above what is afforded in the transportation of products in an ordinary box car.

374 On the former hearing of this case—that is, on the rate itself on oranges—it was claimed in argument and in evidence and in the computations of their statisticians, that the matter of hauling the ice, the matter of furnishing the extra space in the cars for the ice, the matter of the extra cost of these cars for transporting this product, properly inhered in the freight rate itself and should be considered by the Commission in fixing their freight rate; and that, for those reasons and those reasons alone, they were entitled to more and a higher rate than was being paid by other commodities moving in box cars, although those other commodities were of greater value.

I believe I have a right to assume that the Commission considered these matters in accordance with the contentions of counsel, and did give allowance in fixing this freight rate, and that in refusing to change the freight rate of oranges you must have given consideration to those matters and made allowances to the carriers; because, otherwise, I am unable to see why we were compelled to pay forty per cent more for carrying oranges per hundred weight than was the average of their freight to the same destinations and over the same routes. We showed conclusively there that eighty cents was about their average rate. There were more rates

375 below eighty cents than there were above eighty cents.

Mr. Norton: Are you discussing the rail rate?

Mr. Call: I am discussing the question as to whether you did secure, in accordance with your contention, in fixing the rail rate, the benefit and advantage to you of this extra equipment for venti-

lation and refrigeration. You contended for it. Your witnesses testified it should go into the freight rate. I am saying that I believe the Commission must have allowed it, otherwise they could not have allowed forty per cent more for carrying oranges than for carrying beans and canned goods. I may be wrong in that, but I think that must have been allowed in accordance with your contention.

But now in this same case you say they should be allowed in your refrigeration rates. All I am saying—and I do not want to be unreasonable about it—is that this Commission should give a final resting place to those suspended items. We want to pay for it once. We ought to pay for it once. But there is nobody can say we ought to pay for it twice.

What should be considered in fixing this general refrigeration rate if they are not entitled to figure in the refrigeration rate as well as in the freight rate these items for this extra service afforded to this industry? I see nothing in that but the icing and
376 the necessary expense connected with the icing of these cars.

I know that in approaching the refrigeration question we are at a disadvantage on account of the former hearings in these matters by this Commission, because in several instances the refrigeration rate was not reduced or not substantially reduced over perhaps the same distances and under similar conditions. That puts us at a disadvantage. I do not think the Commission ever had in any case before it on refrigeration matters as complete a record as they have in this case.

During the hearing of this case, during the first hearing of this case, there developed a wide divergence of opinion about the amount of ice used and the cost of ice. That led to this order of the Commission, putting on inspectors so they might know the facts. Unless you absolutely hold that one party or the other was doing some pretty tall prevaricating, you could not get a conclusion without those inspectors.

Mr. Norton: Neither party knew.

Mr. Call: Why did they not testify they did not know? We did know, as the record shows, because the Commission's inspectors absolutely verified what we testified to. Did they support what Mr. Leeds said?

377 Mr. Norton: They testified nine and one-half——

Mr. Call (interrupting): Mr. Leeds said sixteen tons.

Mr. Norton: That was an estimate; he never testified to that positively, and that was back in the Ozark cases.

Mr. Call: He testified in this case positively. He testified to sixteen tons.

Mr. Mayer: He changed from fifteen to sixteen tons.

Mr. Norton: He did not testify to that as a general thing.

Mr. Mayer: In this case.

Mr. Norton: He had no data at all, and he found some papers, which he showed me, of several carloads then in controversy, on which the tonnage was sixteen. What he testified in the Ozark case was probably true at that time, as nearly as man could estimate.

They testified they had followed cars and it took nine and one-half tons of ice, and these tests show it took over eleven tons on the Santa Fe.

Mr. Call: You are wrong again. I am sorry your numerous duties have prevented you from looking into the real facts in this case. The testimony of the experts and inspectors of this Commission to the Missouri River shows about nine and one-half tons of ice on the Santa Fe.

378 Mr. Norton: We call it from Chicago.

Mr. Call: It was not their order to follow it to Chicago.

Mr. Norton: We did, and we followed it to destination.

Mr. Call: You never iced a car before in your life at Chicago.

Mr. Norton: I deny that. We never bring a car into Chicago without filling it with ice at Corwin.

Mr. Mayer: That is not the fact, Mr. Norton.

Mr. Norton: Yes, it is.

Commissioner Lane: Corwin is just outside of Chicago.

Mr. Norton: We take the car into Chicago, and we do not know how long it will be delayed there, and they fill it to the roof at Corwin so it will not have to be switched back. It is cheaper to give the ice in that way than to switch the car back to Corwin.

Mr. Mayer: That never was done until this year, when this test was taken.

Mr. Norton: You are in error.

Mr. Call: I will pass that and take what we agreed upon, and that is the experts appointed by the Commission, under agreement between you and me as to what should be done, and they have found and reported here that it takes nine and one-half tons of ice

379 on an average to the Missouri River.

Mr. Norton: Leeds testified about what it took to Chicago, and you are making a comparison with what it takes to the Missouri River. Leeds testified what it would take to Chicago, and they made a test at Chicago, and it took eleven and one-half tons, too, on our road. You said it took about nine.

Mr. Call: I am not asking anybody to believe Leeds or to disbelieve him, because I regard Leeds as absolutely immaterial. You call him a "statistician". Other people have a harsher name for him.

The fact is they say nine and one-half tons to the Missouri River, under the records of the inspectors of the Commission. The question is what that nine and one-half tons of ice are worth. We have taken that contract for it, and on all points from San Bernardino, and it figures out $31 a car to the Missouri River for ice, and that includes the wear and tear on that plant, and depreciation and interest and every other item that should go into the cost of manufacturing ice. That $31 is what it actually costs. The Commission has never had that cost before in any of these hearings, because it had Leeds to show an excessive use of ice. He said twenty

380 tons in Ozark case.

Mr. Norton: That was a single case.

Mr. Call: He led the Commission to believe it was not.

Mr. Norton: No, he did not.

Mr. Call: The Commission will know what to believe. I think the man has testified forty ways from Sunday in every case before the Commission.

Mr. Norton: I do not.

Mr. Call: I do think the record shows that. In this case we have the facts that the cost of that ice is $31, including all the elements of depreciation, interest, wear and tear and cost of production, salaries and every other thing, and besides that they put in the salary of their tax commissioner, manufacturing ice for them, and pay him an arbitrary of twenty-five per cent on the cost, $12,500 a year, and besides he is on the pay-roll as tax commissioner.

Mr. Norton: That was not in the former case.

Mr. Call: It is in this case.

Mr. Norton: That salary does not affect this case at all.

Mr. Call: It goes into your cost.

Mr. Norton: You have not suffered from that at all.

Mr. Call: It is in the element of cost.

381 Mr. Norton: It is not in any element of cost that appears in this case.

Mr. Call: Taking the whole cost of the ice, as they give it, delivered in the bunkers by contract, at all of these icing stations they do not own and all of the stations they do own, and allowing interest and depreciation and every other cost, it costs $31 to the Missouri River, and they charge us $60.

If they are to be held to the proposition that the use of the car and the refrigeration service and the space and the hauling of the ice—if they are to be held to the proposition that they have themselves defended in this case, that that inheres in the freight rate, I say the $31 covers everything except a proper amount for overhead charge, for management—say thirty per cent for management. Nobody can honestly say anything else inheres in it.

Commissioner Clark: What is the minimum carload weight for transportation?

Mr. Call: The minimum carload varies. On oranges it is 27,200 pounds, on the ordinary car of the Santa Fe road.

Commissioner Clark: I mean on oranges.

382 Mr. Call: They have a car, but that is for a car under ventilation. In our method of pre-cooling and pre-icing, we give them a much larger minimum. We increase the minimum by one-sixth, because we have to put in all we can and we put the oranges in seven tiers wide, and there is no need for refrigeration space.

Commissioner Cockrell: What minimum do you have then?

Mr. Call: We increase that by one-sixth.

Commissioner Cockrell: What weight do you have?

Mr. Call: We have 33,000 pounds on these pre-cooled shipments when we do the pre-cooling. When they pre-cool, they take the minimum, because they have to have the space to throw their air through. When we pre-cool, we do not require that space.

Mr. Norton: No, sir; we pre-cool the solid cars.

Mr. Call: You have not done it yet.

Mr. Norton: It was done in the presence of Commissioner Prouty there at Colton, when he was out there—by the train load.

Mr. Call: The ordinary minimum is 27,200 pounds in a refrigerator car of the Santa Fe railroad.

Commissioner Clark: That is under their standard refrigeration?

383 Mr. Call: Under their standard refrigeration or ventilation.

Commissioner Clark: Yes, but generally you get 30,000 pounds in, do you not, by the standard refrigeration?

Mr. Call: We get in what?

Commissioner Clark: I mean without the pre-cooling, do you not load above the minimum?

Mr. Call: No, we load under standard refrigeration just to the minimum. We load to the minimum. We load them six tiers wide and two tiers high, so as to permit cool air to flow freely through the car.

Commissioner Cockrell: How many thousand pounds are there in a load of that kind?

Mr. Call: Under the ordinary refrigeration, 27,200 pounds, and under our pre-cooling system 33,000 pounds.

It should be remembered, I think, that the cars are furnished by the car line companies. Although in the case of the Santa Fe the stock is owned by the Santa Fe, and in the case of the Pacific Fruit Express the stock is owned by the Oregon Short Line and the Southern Pacific jointly, they are operated and managed and their tariff schedules are made on the basis of being independent

384 corporations. The way they operate the company is this: The railroad company, in the case of the Santa Fe, built the cars, furnished the cars to the car line company, and the car line company pays five per cent on the cost for the use of the cars and takes care of the cars. The railroad company pays the mileage to the car line company, the ordinary mileage that a car line company gets. So that in our figuring in this case before, it was conceded the railroads were entitled to charge in their freight rates the amount they paid for the use of these cars, and it figured out about four cents per one hundred pounds on fruit, between four and five cents per one hundred pounds reduced to freight charges per hundred pounds, and we included all the use of the car. The car line company of course ought not to charge in their refrigeration rate anything that pertains to the carrying service. For instance, take it on the item of ice: It properly belongs, as I think it has been placed by the Commission, in the freight rate, because they furnish the carrying of the ice, which is an average of about two tons per car, considering the number of cars of ice to the whole movement of fruit. That carrying costs money to the people that do the carrying and not to the people who own the car and are getting the car mileage for it. It costs money to the North-

385 ern Pacific that takes that car on from Chicago, or to the Pennsylvania that takes that car on from Chicago, and for that reason it should be in the freight rate.

In the carrying of that ice the car line company performs no service, but the carriers or the railways themselves perform all the service, and they give it to the car line company and take it away from their eastern connections or from the railroads themselves, and that is taking it from one who performs the service and giving it to one who does not perform the service. Therefore it belongs, as Mr. Ripley stated, in the railroad rate, and that is as counsel contended on the former trial of this case.

That is also true with regard to equipment. The railroad pays for this equipment when they pay the mileage. If this independent car line company was some meat concern or some outside concern, they would hire this car the same as they hire the car of their own refrigerator car line. When they paid the three-quarters of a cent per car mile, they paid for the use of that car, and having paid for the use of that car, the carrier itself is entitled to whatever charge might be proper to add to the freight moving in that car.

It in no wise belongs to the car line company, because the
386 car line company has already had its pay in the mileage it receives.

These items not only have been placed against the freight rate by counsel and by the President of the road and, I think, by the Commission, but they belong there and they cannot be anywhere else. All there is left of this refrigeration charge is the cost of the ice and a proper overhead charge.

Mr. Norton: That does not mean the carriage of the ice is paid for in the freight rate. To get the car of the car company, we pay to it mileage and haul its ice. That is the consideration.

Mr. Call: Who does it?

Mr. Norton: We do, the railroad company.

Mr. Call: Why is not the railroad entitled to pay for it?

Mr. Norton: It is paid for it.

Mr. Call: When and how?

Mr. Norton: We haul the ice and pay the mileage for the use of that car. Those two elements enter into our consideration. You said that when we pay the mileage, that is all we are entitled to. It is not. We haul the ice.

Mr. Call: How does your eastern connection get paid for
387 hauling the ice in the car? How is the New York Central to get paid for it?

Mr. Norton: The very contracts set forth in your brief are like ours in that respect. The carrier hauls the car company's ice. We are not hauling your ice. You want us to haul your ice.

Commissioner Lane: What do you get per car mile?

Mr. Norton: Three-quarters of a cent.

Commissioner Lane: That is the sum you pay on the ventilator cars?

Mr. Call: Yes.

Commissioner Lane: The same as paid on the packing-house cars?

Mr. Norton: Yes.

Mr. Call: The contract provides they shall pay the usual rate, and they say under that they pay three-quarters of a cent.

In the matter of pre-cooling, the matter of the shipper's right to pre-ice and pre-cool is in my opinion a "short horse." I agree with the Commission on that proposition fully. That has been my position at all times. The position stated by Commissioner Clem-

ents is the meat of my case, and that is, it is a question of
388 rate and a question of duty. If the premises of counsel

are correct, I think that Mr. Durbrow quite well characterized his argument, as he did as a negligible quantity; but if the premises are not correct, I think some people who hear it will characterize it as irrepressible loquacity. In Mr. Norton's argument, if his premises are correct, he may be correct in his conclusion in saying it is a matter of geometry; but if his premises are incorrect, his argument as a whole must fall, because it is based upon the proposition that it is their duty and their duty alone to refrigerate our cars whether we want them to or not. If it is their duty to refrigerate our cars, our oranges, whether we want them to or not, I think it follows that they have a right to say who shall do it. We think it follows it is a duty that cannot be waived under the law. They have no right to make a contract relieving themselves from liability.

The Chairman: If it is their duty to do it when requested, may they not exclusively perform that duty?

Mr. Call: That is a proposition that nobody has any authority to support—yet. I do not think it is the duty of the Commission to manufacture a rule of law, if I may use the term, to legislate

a rule of law for the purpose of creating a monopoly in
389 refrigeration. We have monopoly enough. I am different

from you on that proposition. I know it is said by some members of this Commission that monopoly perhaps is the order of the day—at least they are quoted that way. But before we stretch the law to make any greater monopolies than we now have, we ought to have a remedy and a good clear remedy at that. It has

not been shown yet we have had that.
390 They want to manufacture a rule of law that has never

been known to the law, to create a monopoly in the manufacture of ice, and while they say on the one hand, "We are not afraid of your ice plant"—while they say, "They will all go to the junk pile in the course of two or three years; you cannot do it; we can and you cannot,"—yet they are asking this Commission to say, because they may on our demand be required to refrigerate, that gives them the right to refrigerate everything that we have.

Mr. Mayer: Whether we want it or not.

Mr. Call: Yes, whether we want it or not.

Mr. Norton: We make no such claim.

The Chairman: Does that follow, Mr. Call?

Mr. Mayer: Certainly.

Mr. Call: I think that is true, that at common law——

The Chairman (interposing): For example, suppose it was their duty to keep the temperature of a car up to, say, 80 degrees, if the

shipper desired it. Could not the carrier exclude the shipper from doing anything to secure that result?

Mr. Call: I do not think so.

Mr. Mayer: Certainly not.

Mr. Call: I do not think there is any such rule of law.

391 The Chairman: Then would it not follow that if you ask it to be done, the carrier must do it?

Mr. Call: Yes, that is right.

The Chairman: If A insists upon doing it himself, he may do it?

Mr. Call: The shipper?

The Chairman: Yes.

Mr. Call: If the shipper insists upon doing it, himself, if he can do it with his own methods, and when he has the car rented and it is in his possession without injury to the shipper, why should he not do it the same as he would prepare a package? How will you differentiate this proposition from the man who ships oysters or fish in a box?

The Chairman: I do not undertake to differentiate it.

Mr. Call: We cannot differentiate from all these various matters now in use.

Mr. Norton: The man with the fish box furnishes the box. We furnish the bunkers.

Mr. Call: Do you not give the beef man this right to put his meat down in the car cooled?

Mr. Norton: Yes, and that has always been that way, and the rail rate has been made with respect to that. In this coun-

392 try, the rail rate has always been made in distinction to this——

Commissioner Lane (interposing): Does that mean you are absorbing in the refrigeration rate a part of the rate you think you ought to get for carriage when the bunkers are filled by the orange men?

Mr. Norton: What is the question?

Commissioner Lane: Does that last statement of yours mean that the rail rate ought to be increased when the bunkers are filled by the orange men with their own ice?

Mr. Norton: No, that statement simply means this, that in the eastern country the practice of allowing refrigerator men, who own their own cars, and the beef people and the beer people and others, to fill their own bunkers, was a concession such as has been made in this case, but which was made with respect to the rail rate, and that could be afforded. In this case we expect to get part of our money out of this icing and refrigeration charge. In the other case, they get the money out of the rail rate exclusively. That is the distinction between the East and the West.

Commissioner Lane: This is just what it comes to, is it not, that if these people are going to fill the bunkers with their own ice, you want to raise your orange rate?

393 Mr. Norton: That will be the logic of it.

Mr. Call: That is the point. If they are entitled to raise it, let them raise it. We will pay it.

Mr. Norton: That will be wholly a matter of concession on our part, to let them do it.

Mr. Call: That is denied. It is not a matter of concession at all. We do not want any concession at your hands. If we have not the absolute right to do it, we do not want to do it.

Mr. Norton: I would like an authority on that.

Mr. Call: I will show you some.

The Chairman: Take a shipment of potatoes from Aroostook County, Maine, to New York in the winter, and the only equipment available is a box car, and in order to keep that car up to a certain temperature, you would have to have a stove in there. Assuming that the shipper may have that car heated or not at his option, assuming that it is the duty of the railroad company to heat it if the shipper requires, may not the railroad company insist upon doing it itself and exclude the shipper?

Mr. Call: I do not think so. I do not know of any rule of law that would permit that.

The Chairman: Then it comes to this, that shipper A says
394 to the railroad company, "You heat that car," and the railroad company says, "All right, I will do it; it is my duty." Shipper B says, "I want the car heated, but I do not want you to do it and I insist upon doing it myself."

Mr. Call: That is absolutely correct. That is not a transportation question.

Mr. Norton: We would never know how many stoves to have.

Commissioner Lane: If it is not a transportation question, why do they insert "refrigeration" in the act and make it a duty for the carrier to furnish refrigeration?

Mr. Call: The act does not say they shall except when the shipper requires it.

Commissioner Lane: Of course that is the only kind of refrigeration you want. You would not want to refrigerate furniture.

Mr. Call: Nor fruit that may go without refrigeration. Why should they not have the right to refrigerate our ventilator car. If they can refrigerate our pre-cooled car and pre-iced car, why not our ventilator car?

Commissioner Lane: Of course they have not any right on a pre-cooled fruit to do anything except what you want. But the question of the icing and about the ice in the bunkers is a
395 slightly different question.

Mr. Call: Why has not the shipper a right to ship, when he pays the freight rate, anything that is a matter of commerce, or for the protection of his product?

The Chairman: I put my question in the form *as* a broad question: May not the carrier exclude the shipper from any participation in the performance of any service which the carrier is bound to perform or undertakes to perform?

Mr. Mayer: He cannot in the first place perform this service, and he does not undertake to perform it.

Mr. Call: That is waiving the question.

Mr. Mayer: He does not undertake to pre-ice or pre-cool at our grove.

Mr. Norton: But if they could——

Mr. Mayer: That is an academic question which is before the Commission. You say you cannot do it and will not do it.

Mr. Call: Answering the Chairman's question, the common law was that these services that did not pertain to transportation, that were not a transportation service—of course a transportation service is another matter, and I concede you are right; but on a thing that does not pertain to transportation itself, as you might say,
396 an accessorial service, I say you are wrong.

The Chairman: Let me put it this way: Any service which the carrier is bound to perform, it might exclude the shipper from performing?

Mr. Call: Yes, sir, that is right.

The Chairman: But you say that service which the carrier is not bound to perform, but which nevertheless it may lawfully perform, is a service from which the carrier cannot exclude the shipper?

Mr. Call: I think that is a correct statement.

The Chairman: That is your proposition?

Mr. Call: That is my position, and that is a correct statement of our position in the case.

Commissioner Lane: Mr. Call, suppose it has, as in Section 1, been put down as the duty of the carrier to furnish refrigeration, icing, storage—that is the duty of the carrier?

Mr. Call: Yes, and always has been, and was before, was it not?

Commissioner Lane: Yes. We have the power to regulate the charges on this.

Mr. Call: That does not change the common law. That was a duty before.

397 Commissioner Lane: Assume that it does not change the common law.

Mr. Call: That was the duty before the Act, and the only purpose of the Act was to give the Commission jurisdiction over the charge.

Commissioner Lane: It is its duty to refrigerate. I deliver to you, as a railroad, a carload of oysters. Those oysters must be transported by you safely to Chicago. They must be cared for in transit. They must be refrigerated in transit, if that is necessary.

Mr. Call: I do not agree to that.

Commissioner Lane: You do not think that must be so?

Mr. Call: Oh, no.

Commissioner Lane: You think you can say they need not be refrigerated?

Mr. Call: Certainly.

Mr. Mayer: That is the law.

Commissioner Lane: Then you ice your box of oranges before you give it to them, and you say, "We do not require you to do anything to this."

Mr. Call: That is the point.

Commissioner Lane: Have you the right to come into
398 their car and say, "We will put a certain amount of ice into the car?"

Mr. Call: Why not? We lease that car. It is our car.

Commissioner Lane: But is it?

Mr. Call: We lease the car when we pay the refrigeration charges for the transportation of our stuff.

The Chairman: Is the shipper the lessee of the car?

Mr. Call: I understand he is in a sense the lessee of the car; he leases the car for that purpose, and pays the transportation charge.

Commissioner Lane: I thought the carrier received freight at its station, and its duty was to transport it.

Mr. Call: It furnishes a car to the plant and not in the station.

Commissioner Lane: I am not talking about the practice in this matter, but what the general duty is. It takes a certain amount of freight, and its duty is to transport it. If it chooses to load that freight into a car or to handle it in any way it pleases, that is none of your affairs, except as the practice may be unreasonable, is it?

Mr. Call: I think that is true so far as ordinary freight is concerned, which you ship not in carload lots. When a man
399 gets a car to ship carloads of butter or cream, he has a right to load that car with any commodity he wants to load it with, provided it is not harmful and is transportable.

Commissioner Lane: Your idea is it is like renting a house, that he takes the whole house and he can make use of it as he sees fit?

Mr. Call: What should stop him from doing it? Why cannot he put anything he wants to in that car to transport?

Mr. Norton: Admitting that he does lease the car, he leases only the cubic loading space. He does not, by that rail rate, lease these devices which are covered by a refrigeration charge.

Mr. Call: That is just what I have been saying. I have just been saying in this matter, in this previous argument, that you have your pay for that once in your freight rate. You have just said you were entitled to it by your freight rate. You get it in your freight rate.

On some of their cars these bunkers are collapsible, and we load end to end. On some of them they are removable, and we load one end with ice and the other end with oranges. Suppose we want to fill that car with boxes of oranges and ice and salt, who will stop us?

Suppose we find it to be the case next year that we want to put
400 in kitchen refrigerators to haul our oranges in, and we find they carry better that way, and we fill up that kitchen refrigerator with ice and we ship the oranges in that way, and pay the return charges, whose business is it?

Mr. Norton: Nobody's.

Mr. Call: Is it not our right to do it? We pay for what we ship. We buy your freight. Is it your business whether we put in ice or salt?

Commissioner Clark: Whatever use you make of that car must be in accordance with the published charges of the carrier. They are just as binding on you as on the carrier. You have to obey the rate and the minimum and the other requirements. The question is whether or not the tariff is reasonable.

Mr. Call: That is right. That is the same position exactly. We pay the freight according to the tariff, and we load to the minimum;

we put in the minimum or as much more as we desire, and pay freight on it. The minimum of course we are always subject to pay, but we can put more in, if possible. But our position is there is no authority in the law nor in reason to single out oranges for any different rule. The beer man puts his beer in cool, and puts his own ice in. The butter man puts his butter in cool and puts his
401 own ice in. The cream man puts his cream in cool, and puts his own ice in. The beef man puts his beer in cool, and puts in his ice. In fact, there is not a single commodity that you move, of a perishable nature, except California fruit, that you do not concede the right to.

Mr. Norton: The beef man and the beer man own their own cars.

Commissioner Lane: That does not make any difference.

Mr. Norton: In their right to fill the bunkers? Why not?

Commissioner Lane: Because those cars are leased by the railroad company and become the carriers' own equipment. They are not the beef packers' cars at all when they come on your line.

Mr. Norton: We pay mileage for them, but it is his box, so to speak, when you compare it to the other box.

Commissioner Lane: No, it is your box.

Mr. Norton: He can put anything he wants to into the body of the car or the bunkers.

Commissioner Lane: No, no more than he can fill it up with first class freight.

Mr. Norton: He can load whatever the tariff provides for that car and refrigerate it.

The Chairman: Does not your proposition really come to this, then, that if every car has to have ice put in its bunkers—
402 we will assume that at certain times of the year, at least—that it is the duty of the carrier to furnish that ice, but you say if you choose you may ice your own car.

Mr. Call: Yes.

The Chairman: But the carrier must furnish the ice for the man who does not want to furnish his own ice?

Mr. Call: The carrier, if he holds himself out to do that, does the same as he does in the matter of the ventilator shipments.

The Chairman: My question is, if it is the duty of the carrier to do it upon request for everybody who requests it, may not the carrier exclusively do that and exclude any shipper from doing that?

Mr. Call: I say that is your proposition, and to sustain that you have got to make a rule of law that you have not yet made.

Commissioner Clements: If he would do it at the point of shipment, where the car is offered and has been pre-cooled, or would put it into these cars there, you would not have any objection to his doing that, would you, and making a reasonable charge for that, so that the original filling of the bunker would tie right up with the pre-cooling, and then move it through. You have not any
403 objection to that, have you?

Mr. Call: No, if they do it right and make a proper

charge. But in order to make it effective, they have to do it differently from their ordinary method.

Commissioner Clements: If it is their duty to do it, they must find a method for doing it?

Mr. Call: I do not know as Mr. Norton stated whether the Commission has really the power to require them to do that if they do not want to, but if they want to they can do that very thing you suggest.

Commissioner Clements: If they do not do that, and they haul your pre-cooled car forty or fifty miles and defeat the purpose of pre-cooling to a certain extent, have they any right to object to your doing it if you can do it?

Mr. Call: That is what I say. If they haul the ice down in blocks, so it would not melt fast, and they would fill up these bunkers and pull them down to us, it would be better than to have us try to ice them. They can do it cheaper, and there ought to be large room for profit for them in that business. But they of course do not want to do anything that is going to reduce this price. We are struggling against a condition and we are using every energy at our com-
404 mand and every resource to find some way to get our fruit to market without paying these excessive charges, and we think we have found a better way. We think we have a better and much cheaper way, and they know it is a cheaper way or they would not put this $30 on arbitrarily to stop us from doing it. That is the purpose of that arbitrary. They just charged that arbitrarily. They want to cut out all competition. They are afraid to compete with a little bunch of growers out in a country town that have to build a plant and operate it for a small amount of refrigeration. They are afraid to compete with that little fellow; otherwise they would not put on that arbitrary charge of $30 to stop us. They now say they will even withdraw that and put on the straight refrigeration charge.

Mr. Norton: We would be subject to the Elkins Law if any shipper filed a complaint against us for discrimination.

The Chairman: Let me test your position. Here in Washington, I believe, the less-than-carload freight rate includes cartage and delivery to the consignee. May some consignee insist on doing his own cartage?

Mr. Call: Most certainly, unless they take a transportation through to a certain destination which requires the cartage to complete their haul.

405 The Chairman: That is, nineteen out of twenty can require the carrier to provide cartage facilities, to make that cartage delivery, but the twentieth shipper can say, "I will do my own cartage"?

Mr. Call: I do not believe they could be compelled to furnish cartage unless they have taken a contract to haul the stuff beyond their destination.

The Chairman: I take that illustration because it covers a service which the carriers may perform and which they undertake to perform. My question is, if their- is a service which the carrier is not

bound to perform, but which it may lawfully perform and which it therefore undertakes to perform, may it exclude the shipper from any participation in the performance of that service?

Mr. Call: I would answer that question in this way: If the carrier has undertaken and the shipper has consigned the goods to a point beyond the termination of the railroad that requires cartage, and the transportation company include that cartage distance within their contract and within the point to which they are bound to transport, that is their duty and nobody else has a right to do it.

But, for instance, the destination is Washington, and that
406 is as far as the goods were consigned and as far as the contract read, but as a matter of habit the transportation company is going to carry them on over to Mr. Vernon with a cart, a matter arranged simply as an accessorial arrangement, then the shipper has a right to do it. He can drop his goods here and carry them on himself if they charge too much for that.

If it is a part of the transportation service, if it is a part of the transportation duty the carrier performs, that may not be done; but if it is an accessorial duty after the transportation duty has ended, then it is a duty that the shipper may do or the carrier may do, as they agree.

Mr. Norton: Would you have a right to take one of our locomotives and put your own fuel and water in it and operate it?

Mr. Call: Certainly not.

Mr. Norton: That is the same proposition.

Mr. Call: You do not hold out your locomotives to us for carrying freight or anything of that kind.

I can make an illustration which I think is perhaps more directly effective to us. The law is that a carrier may demand his freight in advance. It is only a matter of courtesy that they allow us to ship under a bond and collect at destination. They can require us to pay in advance. Suppose we tender them a car of fruit, and
407 we say on our instructions, "Ventilate this car, but do not ice." This equipment is either ventilation or refrigeration. We say, "Ventilate this car, do not ice." The freight rate to Chicago is $330 on a car of oranges. Do we have to pay that in advance? How much would they be entitled to collect from us to transport that car from Chicago? Would they be entitled to collect the $330, and in addition to that the $62.50 for refrigeration? When we say, "Do not ice," are not they required to transport that car for $330 freight? In other words, is it not the shipper's right absolutely to say whether he wants refrigeration or whether he does not want refrigeration?

Commissioner Lane: I think that is so.

The Chairman: I do not understand that proposition is disputed.

Commissioner Lane: The trouble with me on that proposition, Mr. Call, is whether you have any right to go into the car and put ice in it and exclude the carrier from furnishing refrigeration when refrigeration is needed, the duty being upon the carrier to furnish refrigeration.

Mr. Call: Ice ought not to hurt the car. We pay the freight on the ice.

408 Commissioner Clements: If the pre-cooling is an advantage and the shipper is entitled to do it and it is an economical thing to do and ought to be promoted, is it a proper thing for the railroad to penalize him so he cannot afford to do it? If the road can do it so as to tie up the icing in a car from the time it moves, with the pre-cooling system, and give the full benefit of it, then let him do it; but if he cannot do it, and confesses he will not undertake, but will ice it somewhere else along in transit so as to destroy the usefulness of pre-cooling, is it not up to him to find a way to do it, as you found it, or separate the transportation and icing and pre-cooling?

Mr. Mayer: It is not contended by the carriers they are able or willing to do the service which the shippers perform. They do not say they will give us the ice where we pre-cool.

Commissioner Clark: Mr. Norton stated they would do it.

Mr. Call: And they did do it.

Mr. Mayer: No, Mr. Commissioner.

Commissioner Clark: He said they would furnish the cars with the bunkers filled with ice.

Mr. Mayer: But that is putting in an additional charge.

Mr. Call: We are talking about whether they will do it.

409 They say they will do it, and he said he would do it. The Commissioner is right. He said they would do it, and furnish the car for $7.50 extra charge, pre-iced, delivered there; and we say if the charge for that service is reasonable and the way it is done is right—that is, so we can use it—we will be very glad to have them do it; but we do not think it is right for them to put a car there and charge us $62 to Chicago and $7.50 extra for putting that car in there, when it only costs us $15 for that ice.

Commissioner Clark: That only goes to the question of the reasonableness of the charge.

Mr. Call: That is the point.

Commissioner Clark: They are prepared to furnish this service, they say. It is a question whether or not their charge is reasonable.

Mr. Call: That is absolutely right.

Commissioner Clark: I understand you make your proposition to this effect, that if they furnish this car, iced, at your station, for the purpose of your loading into it your pre-cooled fruit, and if they furnish it iced in a proper way and at a reasonable charge, that is all you ask?

410 Mr. Call: That is all we ask.

Commissioner Clark: And you do not contend, if they do that, that you still have a right to say you can put your own ice in?

Mr. Call: If they do that at the right price, and in the right way, we do not want to do it, because they ought to be able to do it much cheaper than we can do it, and still leave a profit for them.

Mr. Mayer: That is still not a matter of answer to those who put up their pre-cooling plants.

Mr. Call: We will arrange that part of it. One of our plants buys

its ice; the plant at Pomona buys its ice and hires the fruit pre-cooled at 4 cents a box, and buys the ice to fill the bunkers. The plant at Uplands practically buys the refrigeration. The plant at East Highlands will be the only plant this might perhaps curtail to any extent, but we will get along with that if they will do it in the right way at the right price, putting that ice in in solid blocks, so it will carry through and not require reicing in transit. We do not want these cars re-iced in transit, for several reasons. One is that the opening of these cars en route allows the heat to rush in, and that hurts the fruit. Another is that it makes additional cost, unnecessary in the transportation of that fruit. If they will do
411 that service right and at a fair price, we will be glad to have them do it. As long as they say they will do it, it may be within the province and power of the Commission to have them do it.

Mr. Mayer: They do not say they will do it without re-icing in transit. They insist upon the right to re-ice in transit.

Mr. Call: I do not understand Mr. Norton to express himself on that proposition.

Commissioner Lane: Of course you can say that you do not want it iced in transit.

Mr. Mayer: And they make this arbitrary charge then.

Mr. Call: They would not unless the Commissison allowed them to do it.

Commissioner Clark: I have an idea that is why they are here, that that question might be determined.

Mr. Call: That is what I thought, that that would be determined here.

Before I pass from that I want to cite to you some authorities bearing on this question. I think they bear on this question.

I quote from Hutchinson on Carriers, 3d Edition, Section 505. He says:

"If the shipper undertakes to supply a refrigerator car with
412 ice, the carrier has the right to assume, unless the facts are such as to put him on notice to the contrary, that the shipper has furnished a sufficient quantity of ice to keep the car cool until a delivery to the consignee can, in the ordinary course of business, be made. But the nature of the service in such a case also gives rise to an implication that the carrier will exercise a proper degree of care, where actual delivery has been delayed beyond the usual time, in protecting the property from injury by heat."

I think, Mr. Chairman, that our debate over this question might be resolved by taking a corollary or collateral proposition. If it is the carrier's duty to do this icing, and not the shipper's duty to do this icing, it follows that they could not of course release themselves from that duty by any sort of stipulation in advance. But it is the corollary of that proposition that if it is not their duty to do this icing, they can be released, and they would not be liable.

For instance, if a shipper says, "Do not ice," and notwithstanding that instruction, if there is a damage to the car in transit, the shipper could get a recovery of damages for injury to that car by reason

of its being improperly iced, that would be a conclusive and
413 complete answer to the question, because it would show that it was the carrier's duty to do it, which he could not waive; otherwise, he could not be held for the responsibility in the case where the shipper had taken that duty upon himself.

But if the shipper can take that duty upon himself, and he can lawfully waive and hold the carrier harmless from all liability under the law, that would be proof that it is not a duty devolving upon the carrier by operation of law, but is a duty that may be performed by the shipper.

Upon that question there are some decisions. In the case of Chicago Railway Company vs. Reyman, 73 N. E. (166 Ind.), the shipper sought to hold the carrier liable for damage to fruit shipped in a refrigerator car. The shipper undertook to ice the car, but the ice melted before its arrival, and the fruit was consequently damaged by the heat. The court held that as the shipper had undertaken to ice the car, the carrier had the right to assume that the shipper had furnished enough ice to keep the car cool until a delivery to the consignee, in the ordinary course of business, could be had.

If it was the carrier's duty to do that, no matter whether the shipper did it or whether he did not do it, as a matter of law would
414 he not have been liable if it was his duty? That decision is squarely in point.

In Texas Central Railway Company vs. Dorsey, 30 Texas, 377, it was held that a carrier receiving perishable goods for shipment is entitled to obey the consignor's direction not to ice, and will not be responsible for damages consequent on such instruction, unless through an unreasonable delay in transportation, it becomes the carrier's duty to disregard the instruction.

That is the same proposition exactly, as if it is their duty, it cannot be waived, and they are liable for any defect in the shipper's method of fixing that car—pre-cooling and pre-icing that car. If it is not the duty and the shipper says, "Do not ice" or "I will ice it myself?" then the carrier is absolved from liability, and it does not need any formal words to do that except the words, "Do not ice."

The Chairman: Suppose it is a service which the carrier is not bound to perform, but one which it may lawfully perform and which it undertakes to perform, would not full liability attach, the same as though it were bound to perform it?

Mr. Call: If it undertakes to do it at the request of the shipper, or undertakes to do it—unless in violation of the command of the shipper—they are liable, of course. If the shipper says, "I do
415 not want this refrigerated," can the shipper hold the carrier liable then? Do you think the shipper can hold the carrier liable then, if he says he does not want it refrigerated? There is no duty then.

Commissioner Lane: He does not buy that part of the transportation.

Mr. Call: That is the point exactly.

I think I have said all I can say on this matter.

Commissioner Clark: Mr. Call, what is your claim, as shown in

this case, as to the length of time or distance a car pre-cooled and pre-iced by yourselves will safely carry without any further attention?

Mr. Call: I think *would* would depend somewhat on the season of the year. In the spring of the year it would undoubtedly carry for a month, but in the heat of the summer, along in July and August, it probably would not carry more than to seaboard, maybe eighteen or twenty days, before it would melt.

The difference in our methods is this: We have a mass of 32,000 pounds of cold fruit, cooled down to a temperature of 33 degrees, and it takes a long while to warm it up, and it does not exhaust the ice in those cars.

Commissioner Cockrell: What size of cakes of ice do you put in?

416 Mr. Call: We put in 300-pound cakes, and fill the car up with six tons, and that carries sometimes so that with a long journey it gets down to a thousand pounds.

The fruit does not commence to warm up until the ice is gone. As long as there is any ice, it will hold that fruit down to prevent any decay.

The carriers start out with 27,000 pounds of hot fruit, and it takes a long while, with that small amount of ice, to get it cooled down, and it sometimes happens, as counsel says, that we have claimed damages where the fruit decayed because they never did get it cool. The ice melted, and although they re-iced at several places en route, when it got to Chicago it still was not cool because they did not put in enough ice. The way we ice, I do not think the fruit commences to get warm until the ice is practically gone. When the ice is gone we reach the danger point. We can handle it that way, except in cases of unreasonable delay.

Commissioner Clark: That is what I had in mind. How will you determine, under the privileges of reconsignment and diversion, what is and what is not an unreasonable delay?

Mr. Call: If any delays occur that are not chargeable to the negligence of the carrier, that is of course our burden. No law

417 would permit us to come on to them for injury to that fruit, which we undertook to ice ourselves, unless they, by means of some wreck or something of that kind, delay that car at some point where we did not expect it to be delayed. If we, by our own diversions, delay that car, that is our loss. If they delay it by reason of a wreck or some negligence for which we were not accountable, they would be liable, whether we pre-iced or not. They would be liable for not handling the car properly. It is just the same as to the ventilated cars.

Commissioner Lane: What do you say is a reasonable price for refrigeration?

Mr. Call: I think $31 covers the cost, except a proper amount for overhead charge, and I do not think really that ought to be charged.

Commissioner Lane: $31, the cost of the ice?

Mr. Call: That is the cost of the ice in the bunkers including all

the depreciation, and really as a matter of right that should cover it to the Missouri River.

Commissioner Lane: We must have been far off in the Georgia Peach Case.

Mr. Call: Yes, because you were depending on Leeds. Leeds has been telling all kinds of stories about the amount of ice used
418 and the cost of it.

That is all I desire to say.

Mr. Mayer: Mr. Chairman, may we ask the privilege of putting our oral argument in print for the Commission? There are members of the Commission who may not have time to read all the oral argument, who have not heard it all.

The Chairman: I do not know that there can be any objection to that. Of course we have a stenographic report, which is typewritten for us.

Mr. Mayer: Would it not be more convenient to read it in print?

The Chairman: There is no objection to your putting it in print, if you desire to do so.

Mr. Mayer: We will do so.

The Chairman: There seems to be nothing further in this case. The case will be submitted.

(Thereupon, at 12:10 o'clock p. m., the Commission proceeded to the consideration of other business.)

Stenographer's Minutes,

Before the Interstate Commerce Commission.

Docket No. 3000.

ARLINGTON HEIGHTS FRUIT EXCHANGE et al.
vs.
SOUTHERN PACIFIC COMPANY et al.

WASHINGTON, D. C., WEDNESDAY, *November* 15, 1911.

Also No. 2662.

a Interstate Commerce Commission, Washington.

I, John H. Marble, Secretary of the Interstate Commerce Commission, do hereby certify that the record hereto attached contains true copies of the original transcript of the stenographer's notes of that portion of the testimony taken before said Commission on November 15 and 16, 1911, and of that portion of the oral argument taken November 16, 1911, at Washington, D. C., in the case of Arlington Heights Fruit Exchange and others against Southern Pacific Company and others, docket No. 3000, and Commercial Club, Traffic Bureau, of Salt Lake City, Utah, against The Atchison, Topeka & Santa Fe Railway Company and others, docket No. 2662, the originals of which are now on file and of record in the office of this Commission.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the Commission, this 15th day of April, 1912.

[Seal Interstate Commerce Commission, 1887.]

JOHN H. MARBLE,
Secretary.

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1469 Before the Interstate Commerce Commission.

Docket No. 3000.

ARLINGTON HEIGHTS FRUIT EXCHANGE et al.
vs.
SOUTHERN PACIFIC COMPANY et al.

Also

Docket No. 2662.

COMMERCIAL CLUB TRAFFIC BUREAU OF SALT LAKE CITY, UTAH,
vs.
ATCHISON, TOPEKA & SANTA FE RAILWAY CO. et al.

WASHINGTON, D. C., WEDNESDAY, *November* 15, 1911—
10.30 o'clock a. m.

Present: Commissioners Clements (chairman), Prouty, Lane, Clark, McChord and Meyer.

Appearances:

Asa F. Call, on behalf of the complainants.

Cassoday, Butler, Lamb & Foster, (by William E. Lamb, of counsel) on behalf of the complainants.

1470 T. J. Norton, Esq., on behalf of the Atchison, Topeka & Santa Fe Railway Company.

F. C. Dillard, Esq., H. E. Scandrett, Esq., and C. W. Durbrow, Esq., on behalf of the Southern Pacific, the Union Pacific, the Arizona Eastern and the other Harriman Lines, defendants.

A. L. Halstead, Esq., on behalf of the San Pedro, Los Angeles and Salt Lake Railroad Company.

1471 *Proceedings.*

The Chairman: Gentlemen, there has been assigned for further hearing this morning, case No. 3000, The Arlington Heights Fruit Exchange vs. Southern Pacific Company, et al. Also No. 2662, Commercial Club Traffic Bureau of Salt Lake City, Utah, vs. Atchison, Topeka & Santa Fe Failway Company, et al., relating to the rates on citrus fruit, and we are now ready to hear anything on behalf of the carriers that they desire to present in these matters, or on behalf of the complainants.

Let us first see who are present on behalf of the complainants?

Mr. Call: William E. Lamb will appear with me in the case.

The Chairman: You and Mr. Lamb appear for the complainants in both cases?

Mr. Call: No, Mr. Chairman: only in the Arlington Heights Fruit case.

The Chairman: Does any one appear here for the Salt Lake City Commercial Club?

(There was no response.)

The Chairman: Who appears for the carriers?

1472 Mr. Norton: For the defendants in the Arlington Heights Fruit case, Mr. F. C. Dillard and C. W. Durbrow for the Southern Pacific, the Union Pacific and other companies of that system; and T. J. Norton for the Atchison, Topeka & Santa Fe Railway Company. I should have mentioned also that C. W. Durbrow appears for the Salt Lake Railroad in this case.

The same counsel appear in the Salt Lake case.

The Chairman: We are ready to hear from you, Mr. Call.

Mr. Call: Before proceeding with the evidence, Mr. Chairman, we desire to offer a little evidence, with the permission of the Commission, to explain, a little more fully, the movement of some of the larger volumes of the commodities that move in refrigerator cars, to establish, if we can, the fact that citrus fruits, and especially lemons, are easier and more economical to handle as a matter of traffic transportation.

Before taking that up, however, I would like, if the Commission please, to amend our record somewhat. In view of the attitude of the carriers before the Circuit Court of Appeals of the Eighth Circuit and the Commerce Court and the feeling of that court, I feel that we should ask leave to withdraw a portion of one paragraph of our petition. It is the illustration of paragraph 12, commencing with the words:

1473 "That, as illustrating the unreasonableness of said proposed increase in the lemon rates and the motives actuating the defendants in making the same."

We will file a formal amendment if the Commission will give us permission to withdraw that paragraph, by striking it out.

Mr. Dillard: Have you a copy of the petition?

Mr. Call: No. That is Mr. Lamb's copy.

The Chairman: Is there any objection to the amendment, striking out that paragraph?

Mr. Norton: Yes.

The Chairman: What is the paragraph? You had better read it?

Mr. Call (Reading):

"That as illustrating the unreasonableness of said proposed increase in the lemon rate, and the motives actuating the defendants in making the same, your complainants aver that nearly the entire world's supply of commercial lemons is grown and raised in Sicily and Southern Italy, which produced in the year 1908, 69,000 carloads thereof; that the entire consumption of lemons in this country during said year was about 12,000 carloads of which the growers of California furnished less than 40 per cent. (though their crops were sufficient to supply a larger part) the balance being supplied by the Sicilian and Italian growers; that on account of the much lower cost of labor in Italy and Sicily, and the low ocean rates

1474 from such countries to the United States, the lemon growers of California have for a number of years prior to August 5, 1909, been unable to successfully compete with the Italian and Sicilian growers in the lemon markets of this country, and in consequence have been unable to dispose of their entire crop, and have suffered heavy losses in their business; that for a long time prior to said last mentioned date, the lemon growers of California have agitated in favor of the imposition of a higher tariff duty on foreign lemons in order to enable the lemon industry of California to continue to exist, and in response to such agitation the Congress of the United States, on August 5, 1909, increased the tariff rate on foreign lemons from one cent to one and one half cents a pound, and thus would have enabled your complainants, and others similarly situated, to substantially dispose of their crops; but upon the passage of said tariff law all the defendants hereto, by concert of action, increased said lemon rate as aforesaid; that there is and has been no new condition which justifies said advance, and the same is an attempt on the part of said defendants to appropriate to themselves a large part of such increased tariff on foreign lemons which was imposed by Congress for the purpose aforesaid."

1475 It is only alleged in that way of illustration, and not as a ground for relief; never was so intended, and could not be so construed; but we find the courts and counsel for the carriers very technical, when it comes to the legal proposition, and we would like to withdraw the allegation, because it is not really material to this controversy.

Mr. Dillard: I do not know just what the gentleman means by withdrawing it. If that allegation is abandoned, or not relied on, as he states, the carriers of course would have no objection to that whatever; but we would not want it withdrawn in the sense that it would no longer appear in the record. We would have no objection to any amendment that he might file to show that that is not relied on as a substantive matter here. I do not think the carriers would have any objection to that whatever.

Mr. Call: It could not be withdrawn bodily, of course. I mean

to make an amendment by striking it out of the petition, to show that it is no longer relied upon as an allegation in this proceeding.

Mr. Dillard: I do not think we would object to that. We would have no objection to that.

1476 Mr. Call: That is all we could do, of course.

The Chairman: You may draw, sometime during the day, and file here an amendment so as to make the record show that you desire to strike out that paragraph from the complaint.

Mr. Call: Very well.

The Chairman: And for the present you may proceed upon the assumption that that has been done.

Mr. Call: Along that same line, Mr. Chairman, I desire to have the record show that in our previous argument of this matter, what was said with regard to the needs of the industry, or the charges that were made, the only purpose of the advancement of this lemon rate was to secure a part of the tariff granted to us by Congress, was only said in defense of the original proposition made by the carriers, and not as an original proposition entitling us to relief. We never claimed that the carriers should come to the relief of an unwise investment, if such was the case; and we never claimed that the needs of an industry should fix a rate. All we claimed in that respect was that the assertions and allegations of the carriers themselves were not true; and when we were before the Commerce Court, we agreed upon this statement of facts:——

1477 Mr. Dillard: As to that, if your Honors please, the former argument speaks for itself. There is no objection, whatever, to this being made as an addendum to it and in explanation of it.

Mr. Call: Very well. That was all I was attempting to do, Mr. Dillard.

We agreed upon this statement of facts, before the Commerce Court:

"One issue presented by the defendant roads, in the injunction case, which is before the Ninth Circuit Court of Appeals and before the Commission, was that this lemon rate, when it was reduced to one dollar, was a temporary rate, made by arrangement with the Committee of growers, and with the understanding that when the conditions of the industry improved, the rate might be advanced again and that, as a matter of fact, the conditions had improved."

While we denied the agreement and arrangement between the railroads' representatives and the committee of the shippers, we also took issue with the proposition of the roads that the conditions had improved.

Probably owing to my own want of ability to get these facts clearly before the Commerce Court, they came to the conclu-

1478 sion that this matter was presented to the Commission and decided by the Commission, as being a substantive reason why the rates should be reduced; when the only purpose of it and, as I think, the only purpose of the Commission in discussing it in the report, was simply in answer to the assertion of the carriers that they had a right to advance these rates by agreement with growers, because the conditions had advanced. Our whole attempt was to

show that, because of this competition, our conditions had not improved, and our cost of production had not improved, on account of the cost of labor. We relied, then and now, distinctly upon the one proposition that the advance in rates is unreasonable, per se; that it is an unreasonable advance, and that the $1.15 rate is unreasonably high.

I want that distinctly understood, that all I have said heretofore was to that one proposition; and anything else I may have said with regard to the tariff condition has simply been in answer to the proposition of the roads.

The Commerce Court seems to concede that the value of a product should be one factor in considering what a reasonable rate should be, and I presume that that would not be disputed; and on that ground, and for that reason, perhaps, the price of
1479 lemons on the market might be a material inquiry. In the case, however, we want it distinctly understood that we simrely upon the proposition that this advance in rates is unreasonable.

The Chairman: Have you some testimony that you desire to introduce this morning?

Mr. Call: I did want to offer a witness or two, with the permission of the Commission, to show how some of these large commodities move in comparison with the lemons. I think it is better to do that, unless the Commission is fully informed upon it. If they are, I shall not insist upon it; but it was my purpose to introduce that testimony, especially with regard to the assembling and refrigeration features.

The Chairman: Before we proceed to the consideration of that question, as to the putting in of your additional testimony, what may we hear from the carriers, through their attorneys here, in respect to the further proceeding in this matter, with respect to the question of taking more testimony or submitting it on the record, or any other view you may have of it as to the proper proceedings to a fair and proper disposition of the case and the questions involved in it?

Mr. Norton: When we got word from the Commission that
1480 the case was set down for further hearing, we prepared some data which had not been introduced before the Commission before, and we prepared some little matter illustrative of what had gone in before the Commission before,—not very much. We shall have two witnesses to offer, perhaps three; but probably only two. I understood when the case was first assigned, or shortly after, from Mr. Lamb, that he would have several witnesses, probably four, to examine. We shall have a couple.

The Chairman: You may call your witnesses, Mr. Call, for such additional testimony as may appear to be pertinent on these points.

A. M. MORTENSEN, was called as a witness on behalf of the complainants, and having been duly sworn testified as follows:

Mr. Call: What is your occupation, Mr. Mortensen?

Mr. Mortensen: Traffic Manager of the California Fruit Growers' Exchange.

Mr. Call: What experience have you had in railroading or car line service?

Mr. Mortensen: I was with the Armour car lines at Los
1481 Angeles for about four and a half years, and with the Pacific Fruit Express for about three years, up until July 15, 1910.

Mr. Call: In what capacity were you with the Fruit Express?

Mr. Mortensen: I was district agent for them, located at Los Angeles.

Mr. Call: What were your duties?

Mr. Mortensen: I have charge of the general refrigerator business on the line of the Southern Pacific and the Salt Lake Railway in southern California.

Mr. Call: Are you familiar with the movement of commodities moving in refrigerator cars arising in California?

Mr. Mortensen: Yes.

Mr. Call: Including canteloupes, celery, fresh vegetables and deciduous fruits.

Mr. Mortensen: Yes sir.

Mr. Call: Will you explain, as briefly and concisely as possible, to the Commission, the movement of canteloupes? First, where the canteloupes are produced, and what is done in assembling the cars.

Mr. Mortensen: The canteloupe crop of southern California is produced on what is known as the Imperial Branch of the Southern Pacific, which is about 175 miles east of Los Angeles. The
1482 crop for the last three or four years has run from 1,000 to 2,000 cars a year. It is a highly perishable crop, that moves practically all of it, during a period of six weeks, say from June 1, to July 15.

The shipments during that period vary from one or two cars a day at the beginning and the end of the season to as high as eighty or ninety cars a day. The entire crop is a refrigerator crop, and requires not only refrigeration on routes, but it requires a pre-iced car; and the cars have to be iced before being spotted for loading, and many times are iced during the course of loading, and then again before they leave the loading station.

The climate is exceedingly hot during the period of time that they move, and the amount of ice required is very large.

Commissioner Prouty: I might say that the Commission has just disposed of a case involving the movement of these canteloupes, and it is generally informed as to the conditions under which they are moved. The present refrigeration charge is $97.50 to Chicago as against $92.50 on citrus fruits from southern California.

What is your point, Mr. Call?

Mr. Call: The point I wanted to make, Mr. Commis-
1482½ sioner, is this: I want to make a comparison of rates between the lemon rate and the rates on other principal com-

modities moving in refrigerator cars, as one means of demonstrating a reasonable rate. In doing so, I wanted to inform the Commission with regard to the comparative expense in the movement of these different commodities, especially the assembling expense. Of course the minimum rates you already have in your tariffs; but I meant especially the assembling expense. I did not know that the Commission was fully advised on that, as to deciduous fruits and vegetables, canteloupes and such articles as that, which have a much greater assembling expense than lemons.

Commissioner Prouty: What do you mean by the assembling expense?

Mr. Call: The gathering of the cars for the train load. For instance, the deciduous fruits are gathered up over a distance of four or five hundred miles on various lines, and brought in to one assembling point, without any additional rate. They carry a minimum, now, of 26,000 pounds. They all move under ice, and the assembling expense is very great, as compared with ours.

This melon crop all moves under ice, the cars must be transported under ice to receive it, and it requires a special service
1483 at Imperial Junction to handle the switching, and takes six or seven switching engines to gather them up; and they move in such a short space of time that it requires a large assembling of refrigerator cars, which the railroads attempt to charge to the lemon business.

If that is all familiar to the Commission, I do not care to introduce the testimony. If it is not, I think it is important to do so.

Commissioner Prouty: I do not know that the assembling expense is thoroughly familiar to the Commission. The refrigeration expense is familiar to the Commission but, as I say, that is covered by a higher refrigeration charge, the refrigeration charge being $97.50 from the Imperial Valley to Chicago as against $92.50 from southern California to Chicago.

Mr. Call: Of course the refrigeration part of it is only incidental to the movement, in so far as it increases the carrying expense. As far as the icing goes, that is immaterial to this shipment, of course.

The Chairman: That kind of testimony would seem to be pertinent and of some value in the matter. At the same time, it might be stated in a more general way, without the details, as the
1484 testimony is subject to cross examination. The accuracy of the statements detailed by the witness can be tested by the cross examination of the attorneys on the other side, if it is not satisfactory to them.

Mr. Call: Very well, Mr. Chairman, I shall try to make it as brief as possible. I have asked the witness to be as concise as possible.

Will you state, Mr. Mortensen, the service required in assembling these cars in train loads, and where they are assembled?

Mr. Mortensen: They are assembled at Brawley, which is the last heavy loading point on the branch: The cars from about seven or eight loading points on the branch are finally brought there, for making up into the train that takes them to the main line.

Mr. Call: What switching service is required?

Mr. Mortensen: I might say, as I think that will explain it more clearly than anything else, that a shipper of that commodity is given the privilege of asking for and receiving a car at almost any hour of the day that he may want it for loading. For instance, a man at Brawley, at one packing house, will advise the rail-
1485 road that he wants a car spotted at his house for loading at 9 o'clock in the morning, and he may want another car at the same house at 10 o'clock, or at 1 o'clock in the afternoon, and the carriers attempt to furnish him these iced refrigerators at the actual time that he wants them, which requires a great number of extra men and extra engines and crews for distributing the cars up and down the branch at the different loading stations.

Mr. Call: What number of switch engines is required to handle the business in assembling trains and distributing the cars?

Mr. Mortensen: During the summer of 1910, I had charge of the work for the refrigerator line, and we had eight engines; as high as eight engines on the branch in service at one time.

Mr. Call: What service is required in the way of handling this business, and directing the movement?

Mr. Mortensen: Both the car line and the railroad establish headquarters on the branch for the handling of that business during the time that it moves. We used to have a regular office there, during the time, and the operating department of the railroad main-
tained officials there, whose duty it was to direct the move-
1486 ment of these engines and the assembling of these cars.

Mr. Call: What is the assembling point for the deciduous crop?

Mr. Mortensen: Roseville is now the assembling point.

Mr. Call: What is that crop? Of how many carloads does it consist?

Mr. Mortensen: The deciduous crop consists of approximately 10,000 to 12,000 cars per year. That is outside of apples.

Mr. Call: What fruits are embraced in that?

Mr. Mortensen: Peaches, plums, pears, grapes and numerous other small fruits.

Commissioner Prouty: Are those all shipped under refrigeration?

Mr. Mortensen: Yes sir; practically every car.

Mr. Call: And all in pre-iced cars?

Mr. Mortensen: Not all in pre-iced cars, but a large percentage of it in pre-iced cars.

Mr. Call: Pre-icing a car involves its hauling either to the point of loading or hauling a carload of ice to that point from the icing station?

Mr. Mortensen: Yes sir.

Mr. Call. From what area are these cars assembled?

1487 Mr. Mortensen: The deciduous fruit district extends from, say, Red Bluff on the north to Fresno or Hanford Junction and Visalia on the south.

Mr. Call: I have had a little map drawn of California so that you can follow this testimony better, Mr. Chairman. The lines of road are marked there, most of them (handing map to the Chairman).

Mr. Mortensen: It also goes west to San Jose and east of Roseville into New Castle and such points.

Mr. Call: What are these distances?

Mr. Mortensen: It is about 230 miles from Red Bluff to Roseville, and about 250 miles from Visalia; and about 230 miles from Fresno to Roseville, which makes the assembling district cover a territory of about 500 miles wide by 200 miles long.

Mr. Norton: For assembling what, is that?

Mr. Mortensen: The district from which the deciduous fruit is gathered.

Commissioner Prouty: Is that icing done at Roseville now?

Mr. Mortensen: Only a portion of it. The re-icing is all done there, and a good deal of the initial icing. In some cases the cars are initially iced there and sent out to the loading stations
1488 and then re-iced when the- come back. In other cases, ice is shipped to the loading stations and the cars are initially iced there, or partially so.

Mr. Call: Where are the other producing districts?

Mr. Mortensen: In Santa Clara County, which is in the vicinity of San Jose and Fresno, and in the Sacramento territory.

Mr. Call: How does the expense of assembling trains of deciduous fruits compare with the expense of assembling trains of citrus fruits?

Mr. Mortensen: As the citrus fruits never require iced empty cars, and as the bulk of the citrus fruits originate in a much smaller territory, the assembling expense must be proportionately less. For instance, at least 75 per cent of the citrus fruit crop originates in a territory 65 miles long by about 30 miles wide.

Mr. Norton: Is that true of lemons?

Mr. Mortensen: It would be a little bit higher; probably 80 per cent of the lemons come from there. It might run a little higher than that. I am not sure.

Mr. Call: What have you to say as to the comparative perishability of these fruits, deciduous fruits and fresh vegetables
1489 on the one side and deciduous fruits, especially lemons, on the other?

Mr. Mortensen: The proportion of refrigerated movement shows that pretty well. In the first place, 100 per cent of the canteloupes go iced, and about 85 per cent of the vegetables; that is, outside of potatoes. I am speaking, principally, of celery, cabbage, tomatoes, which go iced; and over 90 per cent of the deciduous fruit goes under refrigeration.

Mr. Call: You neglected to state the percentage of lem ns.

Mr. Mortensen: Lemons, probably average about 14 per cent. They have averaged that for the last two years.

The Chairman: How about oranges?

Mr. Mortensen: Oranges have averaged 55 per cent for the last two years. That is about the usual percentage, and has been for a number of years.

Mr. Call: What is the comparative risk to the carriers of destruction or injury in transit on account of the perishable nature of the fruit?

Mr. Mortensen: There must be some difference. There must be less transportation risk in the commodity that is not as perishable than there is in the more highly perishable products. For instance, if, for any reason, a car of lemons should be delayed three
1490 or four days in transit, the car is usually under ventilation, and the fruit is not highly perishable, and it would not hurt. A car of deciduous fruit, canteloupes or vegetables, would be damaged by such delay.

Mr. Call: What has been the amount of damage claims on lemons for the California Fruit Growers' Exchange during the last two years?

Mr. Mortensen: On lemons for the California Fruit Growers' Exchange for two years we have only filed and collected claims amounting to some twelve hundred or fourteen hundred dollars, all told, on our lemon shipments, which are about 70 per cent of the lemons shipped from California. That is strictly for decay claims. There have been other claims, but not due to the perishable nature of the fruit.

Mr. Call: How does the train service compare between lemons and deciduous fruits and canteloupes, say to Chicago?

Mr. Mortensen: The time given by the carriers on deciduous fruits has been, for a number of years, from one day to two days' better time than is given on citrus fruits. For instance, this year, or the last season, our schedule to Chicago on citrus fruit was eight days; on deciduous fruit it was six days, or six and a half
1491 days; on canteloupes from the Imperial Valley, the schedule has very seldom been to exceed six days, and in some cases they have put in a faster schedule than that. Take celery, and that moves on about the same schedule as citrus fruit. The deciduous fruit and the canteloupe are both given a faster service, however, to Chicago, than the citrus fruits, particularly lemons.

Mr. Call: The lemon is a cured fruit, not shipped as a ripe fruit; it is shipped as a green, cured fruit, is it now?

Mr. Mortensen: Yes.

Mr. Call: And it is so cured as to preserve its keeping qualities?

Mr. Mortensen: Yes sir.

Mr. Call: And, as a matter of fact, lemons are frequently stored for months in the packing house and kept for weeks on the market without injury by decay, are they not?

Mr. Mortensen: Yes. I have known of cases not very long since where lemons have been held as long as five months, before they were shipped.

Mr. Call: And then, when they arrived at the market, they did not perish by decay for some time?

Mr. Mortensen: I could not say as to that, but they arrived at the market in good condition, without any decay.

1492 Mr. Call: And are lemons any longer in being handled than other fruit? Are they retrained, on an average, on the cars, longer than other fruits and vegetables?

Mr. Mortensen: They are retained in the cars longer than vegetables, I believe, and longer than deciduous fruits.

Mr. Call: Longer than oranges?

Mr. Mortensen: Very slightly longer than oranges; the time is practically the same.

Commissioner Prouty: What do you mean by that? Do you mean they are detained on the cars longer?

Mr. Call: I mean the average time from the time the car starts until it is unloaded and turned back is longer on lemons.

Commissioner Prouty: That is, the service is less expeditious?

Mr. Call: Yes; the service is less expeditious, and they do not need that care or promptness which is required in the other case. I think eleven days is the average time——

Mr. Mortensen: Yes, eleven days.

Commissioner Prouty: I think eleven days is the average time from the time of loading.

Mr. Mortensen: Yes.

1493 Commissioner Prouty: That might be because the shipper was negligent in unloading his car?

Mr. Call: It might be; but it has a tendency to show the imperishable character of the lemon. I do not know whether the carrier or the shipper is at fault in the delay mentioned. I am not charging that the carrier is at fault; but it shows that it can be safely done, and that the lemon is not of a highly perishable nature; and that is the point I am trying to bring out. What were the shipments last year of citrus fruits?

Mr. Mortensen: About 46,000 cars. I do not remember the exact figures.

Mr. Norton: Can you tell how many of each?

Mr. Mortensen: I think we have it here.

Mr. Call: Can you turn to it?

Mr. Mortensen: I think so. 39,507 cars of oranges, and 6,856 cars of lemons.

The Chairman: A total of what?

Mr. Mortensen: 46,363.

Mr. Dillard: That is, to all points?

Mr. Mortensen: That is to all points, yes sir.

Mr. Call: Where was the center of distribution last year on lemons? What was the average haul on lemons?

1494 Mr. Mortensen: I think it was about 2200 miles.

Mr. Call: To what point?

Mr. Mortensen: To Chicago; a line drawn north and south from Chicago.

Mr. Call: Leaving Chicago on which side?

Mr. Mortensen: Leaving Chicago on the east; just west of Chicago.

Mr. Call: Where was the center of distribution of oranges last year?

Mr. Mortensen: On a line north and south from Wheeling, West Virginia.

Commissioner Prouty: How far east is that from the other line?

Mr. Lamb: It is approximately at Pittsburg.

Commissioner Prouty: 400 miles east?

Mr. Mortensen: It would be about 450 miles, I think.

Commissioner Prouty: Where do you get those figures?

Mr. Mortensen: I might explain that these cover the California Fruit Growers' Exchange shipments only, and they are arrived at by taking the final destination of each car.

Commissioner Prouty: Is this statement true, then: That the average haul on lemons last year handled by the Fruit Grow-
1495 ers' Association was 450 miles less, approximately, than the average haul on oranges handled by that association?

Mr. Mortensen: I am not sure as to that mileage, but it would be the difference from just west of Chicago and through Wheeling, West Virginia.

Mr. Dillard: In making up your figures, did you take the local shipments, those in California, and the shipments up to Portland and Seattle and all of those?

Mr. Mortensen: No. This statement shows the center of distribution of lemons shipped on the dollar rate: that is, that moved to points taking a dollar rate.

Commissioner Prouty: You take all shipments by your exchange to which the dollar rate was applied?

Mr. Mortensen: Yes.

Commissioner Prouty: And all shipments of oranges to which the $1.15 rate was applied?

Mr. Mortensen: Yes.

Commissioner Lane: What is the percentage of the shipments of your exchange to the total shipments?

Mr. Mortensen: We handled about 70 per cent of lemons.

Mr. Norton: And what per cent of the oranges?

Mr. Mortensen: Last year, 61. No; let me correct that.
1496 61% of the total. It would probably be about 58 per cent of the oranges.

Mr. Call: How many of the new style collapsible bunker cars have these defendants now in service?

Mr. Mortensen: About 5500 cars.

Commissioner Prouty: How many refrigerator cars are in service, handling the orange and lemon crop?

Mr. Mortensen: There are about 18,000 cars in the California service: that is, with the Pacific Fruit Express equipment and the Santa Fe equipment.

Commissioner Prouty: And between a third and a quarter have the collapsible bunkers?

Mr. Mortensen: Yes.

Commissioner Prouty: When you say the California service, you mean the citrus fruit service?

Mr. Mortensen: I mean all service there, for citrus fruits and deciduous fruits.

Commissioner Prouty: Are the carriers now engaged in converting their cars from non-collapsible to collapsible bunkers?

Mr. Mortensen: I think not, to any extent. I do not think they ever did change. It was only in the new construction that they got the collapsible bunkers.

1497 Commissioner Prouty: The addition comes from the new cars?

Mr. Mortensen: Yes.

Commissioner Prouty: Are all new cars of that construction?

Mr. Mortensen: All that have been built for the last year and a half or two years, are of the collapsible bunker pattern.

Commissioner Prouty: Is there any objection from the standpoint of the shipper to the use of the collapsible bunker cars?

Mr. Mortensen: There is no objection from the standpoint of the shipper to the use of the collapsible bunker in lemon shipments as they are, on ventilated shipments.

Commissioner Prouty: Is there any objection to the use of the collapsible bunker car in the movement of oranges?

Mr. Mortensen: There might be, now, for the reason that their ventilator appears to be too small, or does not furnish quite enough ventilation for the shipment of oranges.

Commissioner Prouty: Does the putting up of the bunker interfere with the ventilation?

Mr. Mortensen: It does, to a certain extent.

Commissioner Prouty: Do shippers object to the use of those cars for that reason?

Mr. Mortensen: For that reason?

1498 Commissioner Prouty: Yes.

Mr. Mortensen: That would be the only reason that I know of that they would object to them.

Commissioner Prouty: Do you know whether, in point of fact, they do object?

Mr. Mortensen: They have objected, in the past; but I think our shippers, and the shippers generally, are pretty well agreed that there is no real objection from a marketing standpoint, or a shipping standpoint, to the use of those cars.

Mr. Call: Is there any objection from any standpoint?

Mr. Mortensen: Not if the ventilators prove to be efficient.

Mr. Call: Has there been any demonstration that they are not efficient?

Mr. Mortensen: I made a test of our records, covering all ventilated shipments, orange shipments, only, for the month of March this last season, and the total decay for the month was about 1 per cent heavier in the fruit moving in the collapsible tank cars than it was in the ordinary ventilated cars.

Commissioner Prouty: Was that decay greater in any particular part of the car?

1499 Mr. Mortensen: I could not say as to that. I might explain further by saying that the difference of 1 per cent was principally made up by a number of cars that showed a very heavy per cent of decay, an unusual per cent, a per cent that we could not account for by any other method of reasoning than that the car had been mishandled in transit. The construction of the ventilators is such that you cannot tell from looking at the car from the ground, or even from the top of the car, whether the vents are open or closed. The only way you can determine it is, in the case of a Pacific Fruit

Express car, to look into a very small hole at the side of the ventilator and see whether the plug is up or down.

Mr. Dillard: That decay, however, did happen in the cars with collapsible bunkers? That extra decay of which you have testified?

Mr. Mortensen: Yes.

Mr. Norton: But the bunkers were not up?

Mr. Mortensen: In some cases they were up and in some cases they were down. We shipped a good many last year with the bunkers up.

Commissioner Prouty: Is there any objection to the use of the collapsible bunker cars when the shipment moves under re-
1500 frigeration?

Mr. Mortensen: No.

Commissioner Prouty: When the bunkers are down, it makes no difference whether they are collapsible or not?

Mr. Mortensen: Absolutely none.

Mr. Call: In your test records, in many instances of the same fruit shipped on the same day to the same destination, in the old style and the new style car, you found no difference?

Mr. Mortensen: In many instances we found no difference. And then, in some instances, we had two cars of the very same fruit, out on the same day from the same houses, to practically the same destination, where the fruit in the old-style car would get in with no decay, and the other had as high as 15 to 20 per cent, and the fruit red hot.

Mr. Call: In some instances fruits have been found to be most decayed in the old-style car?

Mr. Mortensen: In some instances, yes.

Mr. Call: So that you are not able to say, from the record you made, as to whether there is any defect in the ventilator?

Mr. Mortensen: No; I have said a number of times, to represent-
atives of the refrigerator lines, who have asked me concern-
1501 ing it, that I believed that, if the ventilator was properly handled, it would provide sufficient ventilation; but the peculiar construction of it made it difficult to have it handled properly, or according to billing instructions.

Mr. Call: Is there any new device now for an improved ventilator construction?

Mr. Mortensen: I know that the people who built the bulkheads for these new cars have now devised a new tank or bulkhead entirely of metal; one that takes up about one-fifth as much of the air space, or only blocks about one-fifth as much of the air space as the old-style bulkhead.

Mr. Call: How about the gate or end of the ventilator?

Mr. Mortensen: In addition to that, they are placing on some new cars which are now building, a wing at the top of this hood, which acts as an indicator, not only as an indicator, but also assists in forcing air into the car as it sets up. It is about six inches wide, and sets up over the top of the hood, and it is connected by a mechanical device with the plug, so that when the plug is up this wing sets up, and when the plug is put in, closing the ventilators, the wing

drops down over the front, making it an indicator as to whether the vents are open or closed.

1502 Mr. Call: Not only an indicator, but also gathering more of the air through the car?

Mr. Mortensen: Yes.

Mr. Call: Is it true that if time should develop a defect in the ventilator of these cars for orange shipments, it is of a slight and unimportant nature and can be easily remedied?

Mr. Mortensen: I think so.

Mr. Call: So that there is no real objection to the use of these cars in that way, loading from end to end?

Mr. Mortensen: No.

Mr. Call: There is no reason why, if there should be a defect, it could not be cheaply and easily remedied?

Mr. Mortensen: I believe it could.

Mr. Call: And it is all right for lemons under ventilation, the way it is?

Mr. Mortensen: Yes.

Mr. Call: What is the cost of the last lot of these new collapsible-bunker cars?

Mr. Mortensen: The last cost, as shown in the last testimony, was $1380.

Mr. Call: What is the contract price, if you know, of the last lot they bought?

1503 Mr. Mortensen: $1380, I believe. That is the Pacific Fruit Express cars, above the 6,600 furnished—from 6,600 to 10,100.

Mr. Call: How many cars are embraced in the contract?

Mr. Mortensen: About 15,000 cars.

Mr. Call: And how many have been furnished up to this date under that contract?

Mr. Mortensen: I think they have all been furnished.

Mr. Call: Do you think, then, they have 5,000 cars under that contract?

Mr. Mortensen: Do you mean they have 5,000 on that contract?

Mr. Call: Yes.

Mr. Mortensen: I think they have pretty near that—no; it would not be 5,000; 6,600.

Mr. Norton: They are not all delivered?

Mr. Mortensen: The difference between 6,600 and 10,000.

Mr. Call: Have been delivered?

Mr. Mortensen: That is all that were ordered, I believe.

Mr. Call: What load will these collapsible bunker cars take on lemons?

Mr. Mortensen: 408 boxes.

1504 Mr. Call: What is that maximum load in pounds?

Mr. Mortensen: 34,272 pounds, I believe.

Mr. Call: What is the present minimum on lemons?

Mr. Mortensen: 26,200.

Mr. Call: By the use of these cars which you say there is no ob-

jection to using, the load on ventilated shipments can be safely increased to 34,000?

Mr. Mortensen: 34,272 pounds.

Mr. Call: And you say that there are 86 per cent of the lemons on an average moving under ventilation?

Mr. Mortensen: Yes sir.

Mr. Call: What is a safe minimum load for the other 14 per cent that moves under refrigeration?

Mr. Mortensen: 336 boxes in the new style; in the new cars. There are some cars in service that will only take 324.

Mr. Call: There are some cars in service?

Mr. Mortensen: Yes.

Mr. Call: What is the length of these cars?

Mr. Mortensen: The inside?

Mr. Call: There are none on the Southern Pacific, are there?

Mr. Mortensen: No.

1505 Mr. Call: All Southern Pacific cars will take 336 boxes load?

Mr. Mortensen: Yes.

Mr. Call: And almost all of the Santa Fe?

Mr. Mortensen: Well, I would not say almost all; about half of them, I think.

Commissioner Prouty: What is the weight of a box of lemons?

Mr. Mortensen: 84 pounds.

Mr. Call: 84 pounds is the estimated weight. It weighs somewhat more than that when it first starts out, and it shrinks somewhat, perhaps, on the way; but that has been the estimated weight for a great many years.

What will oranges load, loading from end to end, in these collapsible cars, Mr. Mortensen?

Mr. Mortensen: Loading two tiers high and six wide, which is the customary way of loading both oranges and lemons, they would take 468 boxes.

Mr. Call: All the cars they are building now are the 40-foot cars, are they not?

Mr. Mortensen: All of the last cars that have been built, that I know of.

Mr. Call: What is the series of the Santa Fe cars that are

1506 shorter in length?

Mr. Mortensen: I do not remember.

Mr. Call: Some of the original cars that were first built?

Mr. Mortensen: Some of the old cars, yes.

Mr. Call: All of the roads are using the 40-foot cars now?

Mr. Mortensen: Yes; all of the roads are using the new cars.

Mr. Call: And that is the usual load, is it?

Mr. Mortensen: Yes.

Mr. Call: To show whether that is the load that is being loaded, what is the average load of all lemons shipped by the fruit growers exchange?

Mr. Mortensen: The average load for two years, the last two years, has been 332.22 boxes per car.

Commissioner Prouty: Have you that in pounds? Have you reduced that to pounds?

Mr. Mortensen: No; I have not.

Commissioner Prouty: You need not take the time to do it now.

1507 Commissioner Prouty: Does that include lemons under refrigeration and ventilation both?

Mr. Mortensen: Yes, sir; that includes both refrigeration and ventilation.

Commissioner Prouty: If you have the same figure as to oranges, you may state that.

Mr. Mortensen: 396 boxes, for the last two years.

Mr. Call: The weight of the orange box is 72 pounds?

Mr. Mortensen: Yes, the weight of the orange box is 72 pounds.

Mr. Call: Do you know why the minimum has been held down on lemons to 26,200 pounds?

Mr. Mortensen: I do not know of any other reason than that there are very few cars in service that will only take that weight.

Mr. Call: Do you know whether any of those cars are now actually furnished to the citrus trade?

Mr. Mortensen: I do not know of any having been furnished for the last two years.

Mr. Norton: Any what?

Mr. Call: Any of those short cars being actually furnished to shippers for shipping.

1508 As to the 40-foot car, under refrigeration loading, is there any objection, from the shippers' standpoint to loading 336?

Mr. Mortensen: No, sir.

Mr. Call: They prefer to do it, as shown by the record here?

Mr. Mortensen: They prefer it.

Mr. Call: They prefer to do it as shown by the record here?

Mr. Mortensen: Yes, sir.

Mr. Call: The reason for that is they can set the boxes in solid in the car and avoid injury in transit?

Mr. Mortensen: It requires less stripping and less balance, and the boxes sit tight in the car and are held firmly in place the whole journey.

Commissioner Prouty: I thought those oranges were loaded in five tiers.

Mr. Mortensen: Six tiers. They will take seven tiers.

Mr. Call: They will load seven under that pre-cooling.

Commissioner Prouty: I understood it was five and six, but you say it is six and seven?

Mr. Call: Yes.

1509 Mr. Mortensen: The inside width of a refrigerator car is something over eight feet, and an orange box is one foot, about one foot wide, or one foot square.

Commissioner Prouty: Is the loading of lemons different under refrigeration and under ventilation?

Mr. Mortensen: No, sir, it has not been.

Mr. Norton: You have not in practice been filling up this space Mr. Call has been asking about, have you?

Mr. Mortensen: We have loaded the cars as they have been placed at the packing houses.

Mr. Norton: Have you loaded any cars seven tiers wide under ventilation?

Mr. Mortensen: No, not seven tiers wide. I am only talking of six tiers wide, as is the customary method of loading the full length of the car as it is placed at the packing house.

Mr. Call: Have you a copy of this book of exhibits there?

Mr. Mortensen: Yes, sir.

Mr. Call: Did you prepare this book of exhibits from one to ten?

Mr. Mortensen: I prepared a portion of it.

Mr. Call: Was it prepared under your direction?

Mr. Mortensen: Yes, sir.

1510 Mr. Call: Exhibit 1 shows the orange and lemon shipments by months in the season of 1910 and '11.

Mr. Mortensen: 1909-'10 and 1910-'11.

Mr. Call: That includes all shipments, of course, from all California?

Mr. Mortensen: That includes all shipments to all points.

Mr. Call: Exhibit No. 2 shows the percentage of iced and ventilated shipments, average days out, average decay, average number of boxes per car, and total decay claims. Does that include simply the exchange?

Mr. Mortensen: That is the exchange shipments.

Mr. Call: That is an actual statement from the exchange books for the same period?

Mr. Mortensen: Yes, sir.

Mr. Norten: May we have copies of those exhibits?

Mr. Call: I will furnish them to you at once.

Mr. Mortensen, Exhibit 3 is a statement showing the average load of lemons during the seasons 1909-'10 and 1910-'11, iced and ventilated cars, and what the average load would have been if collapsible tank cars had been used on ventilated shipments and loaded full inside length.

Mr. Mortensen: Yes, had been used and loaded.

1511 Mr. Call: You prepared that statement, did you, and it is correct?

Mr. Mortensen: Yes, sir.

Mr. Call: Exhibit No. 4 shows capacity of refrigeraator equipment now in service on the Southern Pacific, Santa Fe and Salt Lake roads, when loaded with lemons in boxes. You prepared that statement, did you?

Mr. Mortensen: Yes.

Mr. Call: And it is correct, is it?

Mr. Mortensen: To the best of my knoweldge.

Mr. Call: Exhibit No. 5 is a comparative statement showing rates and earnings on lemons 336 and 408 boxes with vegetables, deciduous fruits and other Pacific Coast commodities?

Mr. Mortensen: I prepared a portion of that, but the major part of it was prepared by Mr. Dezell.

Mr. Call: Under your general direction, you and he working together?

Mr. Mortensen: Yes.

Mr. Norton: Does that statement show how many 408-box loads you handled?

Mr. Call: It shows the average loading of them.

Mr. Mortensen: That statement does not show that, no, sir

1512 Mr. Call: That statement is for comparative purposes, to show what the earnings on these cars would be under the refrigerator load and under the ventilator load?

Mr. Durbrow: Would be, or are?

Mr. Call: Would be, or are when so loaded.

Mr. Norton: That is what I wanted to get at. How many does the statement show were ever loaded that way to 408?

Mr. Call: I do not think the statement shows, but that is the fact, that there have been some loaded in that way. I do not think any very large proportion have been so loaded, but they have been so loaded.

In these statements, and particularly in this last statement, comparing the car earnings for the Atlantic seaboard haul, 3200 miles, you have here lemons under refrigeration $282.24 and under the ventilator load, collapsible car, $342.32. Is that correct?

Mr. Mortensen: Yes, sir.

Mr. Call: That is as you have figured it?

Mr. Mortensen: Yes, sir.

Mr. Norton: Is that Exhibit 5?

Mr. Call: That is Exhibit 5, yes.

On deciduous fruits, the car earnings you have placed at

1513 $299.

Mr. Mortensen: Yes, sir, on 26000 pounds.

Mr. Call: That is the minimum provided in this tariff?

Mr. Mortensen: Yes, sir.

Mr. Call: Is that as much as they can put in?

Mr. Mortensen: That is as much as they do put in, usually. Very often they load less than that.

Mr. Call: Is that the maximum they can use?

Mr. Mortensen: I would not say it is the maximum. They could put in more, probably, but it is the maximum that they can safely load.

Mr. Call: How do the shippers feel about that?

Mr. Mortensen: The minimum used to be 24,000 pounds, and when the rate was reduced the minimum was increased, and the shippers have been very much dissatisfied this year by having to load the 26,000 pound minimum.

Mr. Call: When did that reduction in rate take place?

Mr. Mortensen: I do not remember. It only went into effect for this season's shipments.

Mr. Call: What was the reduction?

Mr. Mortensen: It was reduced to $1.15, and the rate was as high as $1.40, I believe, in some places.

1514 Commissioner Prouty: Is that rate a blanket rate of $1.15 on deciduous fruit?

Mr. Mortensen: Yes, sir.

Commissioner Prouty: And applies to all the territory?

Mr. Mortensen: It applies to all Eastern territory.

Commissioner Prouty: Is that the lowest rate?

Mr. Mortensen: I think there is a lower rate to Salt Lake, although I am not sure.

Mr. Call: Have you figured this on the basis of car mile, rate per car, par car mile, and per net ton mile and per gross ton mile?

Mr. Mortensen: Yes, sir.

Mr. Call: In each of those respects you have figured an increased revenue on the lemon rate as compared with deciduous fruits and vegetables?

Mr. Mortensen: Yes, sir.

Commissioner Lane: What was the total shipments of deciduous fruit this year?

Mr. Mortensen: The shipments are not over yet, but they are now about 11,000 cars, a little less than 11,000 cars.

Commissioner Lane: Probably will not exceed 15,000 cars?

Mr. Mortensen: They will not exceed 12,000, I believe.

1515 That does not include apples, however.

Commissioner Prouty: What is the rate on apples?

Mr. Mortensen: $1.

Commissioner Prouty: With a minimum of what?

Mr. Mortensen: 30,000 pounds.

Commissioner Prouty: Those move under ventilation?

Mr. Mortensen: Practically all. There are some move under refrigeration.

Commissioner Lane: They come from farther west than the other fruit, do they not? They chiefly come from the Watsonville country?

Mr. Mortensen: Chiefly from the Watsonville country, yes, sir.

Commissioner Prouty: Where is that?

Commissioner Lane: Down on the coast.

Mr. Mortensen: South of San Francisco about 150 miles.

Mr. Call: Do you want to correct your statement with regard to that last number of cars?

Mr. Mortensen: I said $1380, and the record shows $1349.

Mr. Call: You prepared Exhibits 6, 7, 8 and 9, showing the distibution of fruits from the California Fruit Exchange and the map, Exhibit 10, showing the center of distribution?

1516 Mr. Mortensen: Mr. Dezell and myself prepared it. I did part of it.

Mr. Call: We will offer in evidence these exhibits, from 1 to 10, inclusive.

Mr. Norton: Ought they not to be numbered in some way to distinguish them from other exhibits 1 to 10 in the old record?

Mr. Call: They might be numbered Complainant's Re-Hearing Exhibits 1 to 10, or we can say Mortensen Exhibits 1 to 10.

Mr. Dillard: Mr. Mortensen had exhibits on the other hearing did he not?

Mr. Call: No. We can call these Mortensen Exhibits for Complainants upon Re-Hearing Nos. 1 to 10.

The Chairman: Each one of those exhibits ought to be marked in the record. Have you copies of those.

Mr. Call: I have one copy for the Commission and one for each of counsel.

The Chairman: Be sure that goes into the record, and that other counsel are supplied with copies.

Mr. Mortensen: I will do so, your Honor.

(The exhibits referred to and offered in evidence are marked "Mortensen Exhibits, for Complainant, on Re-Hearing, Nos.
1517 1 to 10, inclusive," and are set forth herein at the conclusion of Mr. Peabody's testimony at Record page 1563.)

Mr. Call: You may cross-examine gentlemen.

Cross-examination:

Mr. Durbrow: Mr. Mortensen, please define the limits within which citrus fruits are produced in the State of California, and I ask you, if you will, please, to regard lemons, oranges and grape fruit as citrus fruits and consider them as one commodity.

Mr. Mortensen: The farthest north is Butte County, which is north and east of Sacramento; then in what we call the Porterville district, which is in Tulare County, east and south of Fresno. Then we have the Santa Barbara district, which is around Santa Barbara and east and south of there. Then we have what is generally known as the Southern California district, including the territory between Los Angeles and Redlands. Then we have the San Diego District.

Mr. Durbrow: How many distinct districts are there in the State of California in which citrus fruits are produced?

Mr. Mortensen: I do not know just how you would bound those districts. We usually term it the Butte County district, the
1518 Porterville District, and the Southern California district, and sometimes the San Diego district is spoken of separately from the Southern California district.

Mr. Durbrow: Do you know the distance from Santa Barbara on the north to San Diego on the south which, as I understand from you, defines the northerly and southerly districts in the southern district?

Mr. Mortensen: I do not know the actual mileage.

Mr. Durbrow: Am I correct in my statement that it is 126 miles from San Diego to Los Angeles, and 110 miles from Santa Barbara to Los Angeles?

Mr. Mortensen: I think that is correct.

Mr. Durbrow: The short-line mileage from Los Angeles to Colton and San Bernardino is in each instance 60 miles, is it not?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: That, in your judgment, would define the southerly district, would it, in which citrus fruits are produced?

Mr. Mortensen: Yes.

Mr. Durbrow: Then you have these districts in the north. Do you know how many miles from Watsonville, on the north, it
1519 is to San Diego, on the south?

Mr. Mortensen: No, I do not, but it must be about 600 miles.

Mr. Durbrow: In handling the citrus fruit business of California, the carriers have to have reference to that entire district, do they not, defined by you?

Mr. Mortensen: I do not think so.

Mr. Durbrow: Why not, please?

Mr. Mortensen: The Northern California fruit moves entirely separate and distinct from Southern California fruit.

Mr. Durbrow: You misunderstand my question. In handling the citrus fruits out of California, the carriers are obliged to have reference to this entire territory which has been defined by you, are they not?

Mr. Mortensen: If they want to define the territory growing citrus fruit, they would have to use that territory.

Mr. Durbrow: In the southern district, which as I understand is bounded on the north by Santa Barbara and on the south by San Diego and on the east by Colton and San Bernardino—is that district served by numerous branch lines extending out into all that territory?

Mr. Mortensen: There are some branch lines, but I would not say numerous branch lines.

1520 Mr. Durbrow: Can you tell us how much branch line service is involved in the shipment of that fruit?

Mr. Mortensen: I should say very little branch line service.

Mr. Durbrow: I will next direct your attention to territory in which cantaloupes are produced. Please define that territory.

Mr. Mortensen: The main cantaloupe territory is on the Imperial branch of the Southern Pacific.

Mr. Durbrow: What is the length of that branch?

Mr. Mortensen: Abut 50 or 60 miles; from Imperial Junction to Calexico is the district.

Mr. Durbrow: That is a single branch line extending down from Imperial Junction, without any branches, is it not, operated by the Southern Pacific?

Mr. Mortensen: There are no branches operated by the Southern Pacific Company; that is correct.

Mr. Durbrow: It is one continuous line?

Mr. Mortensen: It is one continuous line, yes.

Mr. Durbrow: Cars are placed upon the main line, if you may consider it such, or the branch of our main line, strictly speaking, for the loading of those cantaloupes that originate in all
1521 that territory.

Mr. Mortensen: Yes, sir.

Mr. Durbrow: Is that a fact, Mr. Mortensen? Cars are spotted along this branch line from Imperial to Calexico?

Mr. Mortensen: Yes, sir.

Mr. Durbrow: When the cars are spotted and loaded, the engine may operate from Calexico and collect those cars as it moves towards Imperial Junction, making up its train as it proceeds?

Mr. Mortensen: It may do that, but that is not the usual way of doing it.

Mr. Durbrow: I understand. What about the deciduous fruit districts of California? How will you define those, please?

Mr. Mortensen: The deciduous fruit district as a main district would be from Red Bluff on the north to a little south of Fresno, on the south, over into San Jose and west of Sacramento, to Newcastle and such places. There are also some deciduous fruits produced in Southern California, some down in the San Diego district.

Mr. Durbrow: To any great extent?

Mr. Mortensen: No, not to any great extent.

Mr. Durbrow: What would you say would be the territorial boundaries by mileage of the deciduous fruit district?

1522

Mr. Mortensen: The main district would be within a mileage of 500 miles north and south.

Mr. Durbrow: What would it be east and west?

Mr. Mortensen: About 200 miles—150 to 200 miles.

Commissioner Lane: Did you state how many oranges and lemons came out of the Santa Barbara country?

Mr. Mortensen: No, sir; I did not.

Commissioner Lane: What is the extent of the production there?

Mr. Mortensen: I cannot say offhand just what it is. It is in the neighborhood of 1500 cars in the Santa Barbara district, I should say.

Commissioner Lane: Is it as much as 2 per cent or 3 per cent of the whole movement?

Mr. Mortensen: It would be more than that.

Commissioner Lane: A little more than that?

Mr. Mortensen: Yes.

Commissioner Lane: How about San Diego?

Mr. Mortensen: San Diego probably produces about the same as the Santa Barbara district.

Commissioner Lane: Could you give us the figures showing the amount of the San Diego and Santa Barbara movement?

1523

Mr. Mortensen: I can get them, yes.

Commissioner Lane: And the balance from the central part of the southern territory?

Mr. Mortensen: Yes, sir; I can get them. I have not them right with me now, but I can produce them probably during the day.

Commissioner Lane: Is the Tulare country included in the southern territory?

Mr. Mortensen: No, sir, that is distinct territory.

Commissioner Lane: What is the movement out of there?

Mr. Mortensen: About 3,000 cars.

Commissioner Lane: Does your association handle that?

Mr. Mortensen: We handle about 50 per cent of it.

Mr. Call: How does that move? That is not assembled at San Bernardino, is it?

Mr. Mortensen: No, sir; it is assembled at either Porterville or Fresno. If the fruit is routed east via Ogden, it is usually assembled at Fresno. If it moves south, it is usually assembled at Porterville.

Mr. Call: And does not move over the Southern California lines?

1524 Mr. Mortensen: Not usually.

Mr. Call: It moves out through Barstow or Ogden?

Mr. Mortensen: Yes.

Commissioner Lane: I suppose it is safe to say not more than 10 per cent of all the oranges and lemons of the southern country come from a further distance than 125 or 130 miles from Colton?

Mr. Mortensen: Yes; that is very nearly correct.

Commissioner Clark: Do the figures you gave as to the total movement of these different fruits represent the total from the State, or just what has been handled by the California Fruit Exchange?

Mr. Mortensen: The figures I gave for the total shipments included all shipments from California; but those that I used in arriving at the loading, and so forth, are only the shipments of the California Fruit Growers' Exchange.

The Chairman: Your total figures are about four to six thousand carloads. Is that of lemons and oranges only, or does it include grape fruit?

Mr. Mortensen: It includes grape fruit. I do not think there is any separate cars of grape fruit go out of there. It is usually in mixed cars.

1525 Mr. Durbrow: Mr. Mortensen, can you state whether or not it is a fact that 50 per cent of the deciduous fruits moving out of California had their origin within a radius of 50 miles of the city of Sacramento?

Mr. Mortensen: I could not state positively whether that was the case.

Mr. Durbrow: What would be your judgment?

Mr. Mortensen: I do not think it does.

Mr. Durbrow: You do not think so?

Mr. Mortensen: No, sir. That is, it might be loaded in the cars there. There is a lot assembled at points up the river and brought there to load.

Mr. Durbrow: I am speaking of fruit having its origin, grown within a radius of 50 miles of San Francisco.

Mr. Mortensen: I should say not.

Mr. Durbrow: Taking into consideration all the river business?

Mr. Mortensen: I should say that percent is too small.

Mr. Durbrow: You should say the per cent is too small?

Mr. Mortensen: Yes.

Mr. Durbrow: More than 50 per cent would originate in that radius?

1526 Mr. Mortensen: No, I mean the other way—less than 50 per cent would originate within a radius of 50 miles of Sacramento.

Mr. Durbrow: Considering oranges, lemons, tangerines and grape fruit as one crop of citrus fruit, what crop in California moves in greatest volume in refrigerator cars or equipment? It is the citrus fruit crop, is it not?

Mr. Mortensen: Yes; all the citrus fruit moves in refrigerator equipment, or practically all of it.

Mr. Durbrow: So, therefore, am I correct in my understanding that the needs or necessities of the carriers in supplying refrigerator equipment are measured by the volume of the citrus fruit moved from California territory?

Mr. Mortensen: No, I should not say you were correct in so far as furnishing refrigerator cars is concerned.

Mr. Durbrow: Wherein am I incorrect, please?

Mr. Mortensen: I think there is more fruit and vegetables loaded in refrigerator cars than there is citrus fruit—that is, I mean that the citrus fruit represents less than 50 per cent of the total movement from California in refrigerator equipment in a year.

Commissioner Lane: That includes deciduous fruits that
1527 go in refrigerator cars?

Mr. Mortensen: Yes, sir.

Commissioner Lane: Cantaloupes and celery and all the other things?

Mr. Mortensen: Yes, sir—potatoes and cabbage and wine and various other commodities.

Mr. Call: And tomatoes and other vegetables?

Mr. Mortensen: Yes, that includes tomatoes and other vegetables.

Commissioner Lane: You say there are more than 40,000 cars of all those put together?

Mr. Mortensen: I believe there are, yes, sir, taking them all together, the coast shipments and eastern shipments and everything.

Mr. Durbrow: What crop moving from California determines the necessity for providing the maximum number of refrigerator cars?

Mr. Mortensen: It depends on the time of year.

Mr. Durbrow: At any time of year during the season any crop is harvested.

Mr. Mortensen: Take from the 10th of June to the 10th of July, cantaloupes are the commodities that determine the extra
1528 number of refrigerator cars required in California. That is one of the——

Mr. Durbrow (interposing): How many cars of cantaloupes do you say move out of the Imperial Valley in a year?

Mr. Mortensen: They have moved from California 2,000 cars.

Mr. Durbrow: You have 18,000 cars employed in the coast service, as I understand it?

Mr. Mortensen: Yes.

Commissioner Lane: Who has 18,000 cars?

Mr. Durbrow: All the roads serving California employ 18,000 cars in California service.

Commissioner Lane: That means the Southern Pacific Line, the San Pedro Line, the Santa Fe, and the Central Pacific?

Mr. Durbrow: Yes, your Honor.

You do not mean to say, Mr. Mortensen, it is necessary to have 18,000 refrigerator cars built to handle 2,000 cars of cantaloupes in a season?

Mr. Mortensen: No, sir; I do not. What I was trying to say was that it requires sometimes as high as 75 to 80 cars a day in the handling of a commodity, the total shipments of which are only about 2,000 cars, but they move in such a short time that it requires a lot of refrigerators during that time.

1529 Mr. Durbrow: I did not want to ask a leading question, but I think I will have to.

Is it a fact that the movement of the citrus fruit crop from California during the season that it moves has made it necessary to employ 18,000 cars in the service? I am keeping in mind that other shipments may move during the same time, but is it not a fact that the great movement of the citrus fruits from California fixes the maximum number of cars primarily that are employed in that service?

Mr. Mortensen: I should not say so, any more than other products that move in refrigerator equipment.

Mr. Durbrow: Let me ask this question, then, please: When does the citrus crop move in California?

Mr. Mortensen: During every month in the year.

Mr. Durbrow: When is the heaviest movement?

Mr. Mortensen: From December to June.

Mr. Durbrow: What is the heaviest month?

Mr. Mortensen: It varies. Usually April and May are the heaviest months.

Mr. Durbrow: April and May are usually the heaviest months?

Mr. Mortensen: I believe so. Our report here will show.

Mr. Durbrow: During the heaviest movement of the citrus

1530 crop, did you employ all the refrigerator cars in your service, hastening them back to California under expedited service in special trains in order to supply the needs of California shippers?

Mr. Mortensen: Such used to be the case, but since the carriers have gotten so many more refrigerators, the necessity for special trains is in a measure done away with. Further than that, during the very heavy months, during the heavy citrus-shipping months, there is also a heavy movement of vegetables.

Mr. Durbrow: When do cantaloupes move from Imperial Valley?

Mr. Mortensen: Approximately from June 1st to July 15th.

Mr. Durbrow: When does the citrus fruit crop move from California?

Mr. Mortensen: As I have already stated, it moves during the entire year.

Mr. Durbrow: When is the principal movement?

Mr. Mortensen: From December 1 to June 1.

Mr. Call: There is hardly any need for repeating questions so often.

Mr. Durbrow: I am merely laying the foundation for further questions.

1531 The Chairman: Proceed, gentlemen.

Mr. Durbrow: Do the appies move at the season when the citrus fruit shipments are comparatively low?

Mr. Mortensen: A portion of them do. A portion do move when the shipments of citrus fruit are heavy. For instance, quite a proportion of the apple shipments in the Watsonville district move at the time the Porterville district oranges move. We have some 3,000 cars shipped from there that are all shipped or the big bulk of that crop is shipped from November 1 to December 15. We often ship from that territory as high as 75 cars a day.

Mr. Durbrow: Do you know how often the shipments of the deciduous fruits and cantaloupes are diverted in transit as compared with the number of diversions of citrus fruit shipments?

Mr. Mortensen: I think they are very much the same. Probably cantaloupes are less. They have to get cantaloupes through to market in a hurry, and they cannot take any chances on diverting them very much.

Mr. Durbrow: Do you know the practice obtaining in the method of moving the citrus fruit crop, relating to diversion, as compared with the other crops?

1532 Mr. Mortensen: They are very much the same.

Mr. Durbrow: Are apples held in storage in transit in many instances?

Mr. Mortensen: They used to be, but they are not held so much now.

Mr. Durbrow: Since when has that practice changed?

Mr. Mortensen: In the last two years, on the coast. There are not nearly as many held in storage on the coast as heretofore.

Mr. Durbrow: How about being held in storage during transit at other points?

Mr. Mortensen: I do not know how they are held east. There are a good many held east, probably.

Mr. Durbrow: When apples are held in storage in transit and when they are diverted usually, do you know whether an extra charge of 10 cents is made for that service?

Mr. Mortensen: No, sir; I do not.

Mr. Durbrow: You do not know that?

Mr. Mortensen: No. I do not think there is such a charge.

Mr. Durbrow: I want to direct your attention, if you please, to these collapsible bunkers. Do you regard those collapsible bunkers as an improved and satisfactory device?

1533 Mr. Mortensen: I regard them as an improved device.

Mr. Durbrow: There is room for improvement still?

Mr. Mortensen: In order to make them entirely satisfactory, there might be some room for improvement.

Mr. Durbrow: Since you last testified in this case, have the carriers continued their experiments with reference to these collapsible bunkers?

Mr. Mortensen: They have to some slight extent, I think.

Mr. Durbrow: Do you recall testifying that the shippers had refused to load the collapsible bunker cars and that they had been

proven unsatisfactory to the carriers and the Pacific Fruit Express, and do you recall testifying you had recommended they be discontinued?

Mr. Mortensen: No, I do not recall testifying that I recommended that they be discontinued. I recall testifying some shippers objected to their loading. They were like any other new departure. They are slow to take hold of anything of the kind.

Mr. Durbrow: Did you recommend that they discontinue constructing cars or converting cars into the collapsible bunker type?

Mr. Mortensen: No, I did not recommend discontinuance
1534 that I know of. I recommended that they refrain from building them in the first place.

Mr. Durbrow: Can you state the number of collapsible bunker cars in use on the Pacific Fruit Express and on the Santa Fe Line?

Mr. Mortensen: A little over 5,000—about 5500, I believe.

Mr. Durbrow: Do you know whether the faster time which you say is made on cantaloupes and deciduous fruit is accounted for by the fact there are fewer diversions in that kind of shipments compared with citrus fruit shipments?

Mr. Mortensen: I should say that had nothing to do with it.

Commissioner Lane: What is the average number of diversions, say, with reference to lemons?

Mr. Mortensen: I do not know as to lemons, but on all fruit last year, our diversions, the California Fruit Growers' Exchange diversions, were only about one diversion to each 10 cars.

Commissioner Lane: What would that diversion be? Give us an illustration.

Mr. Mortensen: In some cases it would be diverting a car from one point to another after it had arrived at the given point.
1535 For instance, after a car arrives at Denver, it might have been held there a day or two, or several days, and then diverted to Chicago, and then on again.

Commissioner Lane: Does this involve in any case a back-haul?

Mr. Mortensen: In some cases it does, yes, sir. The tariff provides in some cases for the back-haul free.

Mr. Dillard: If your Honors please, I would not want Mr. Mortensen to unintentionally fall into an error; but he made a statement that diversions were only about one car in 10. I take it he has not looked up his figures on that. If he has not, I would like for him to look specifically to his figures.

I think the diversions shown on lemons are possibly something like 50 per cent, and on oranges something like 47 per cent. We will give those figures later—at least, as to some roads. The reason I am calling your attention now is that Mr. Mortensen, in the best of good faith, has likely fallen into an error which an examination of his records will correct.

Mr. Mortensen: Does that cover last year, Mr. Dillard?

Mr. Dillard: I do not know how long a time the statements do cover. I understand it does.

Mr. Mortensen: I am not positive. I was stating that
1536 from memory.

Mr. Dillard: I call your attention to it because I know

you would not intentionally make an erroneous statement.

Mr. Mortensen: I had a statement put on my desk by our diversion man, who handles the diversions through our department, and it showed a very much less number of diversions for last year than for any previous year of which we had a record.

Mr. Dillard: You have not the figures with you?

Mr. Mortensen: I have not.

Mr. Dillard: That was my only purpose in calling attention to it, because I know you would not make the statement intentionally, and if you have the actual figures, I prefer you should look them up.

The Chairman: That matter may be looked up; he may look into his figures and make a statement with reference to the matter later.

Mr. Dillard: It is only for the purpose of correcting him, Mr. Chairman. I know he would be glad to be corrected if he was wrong.

The Chairman: Proceed, Mr. Durbrow.

Mr. Durbrow: I want to call further attention to the collapsible bunker matter and ask one question with relation to it. Please base your answer upon the experience you have had in the
1537 refrigerating business and upon the experiments you have made, and see whether in your opinion shipments of lemons move forward to destination under refrigeration with as small a percentage of damage when the cars are loaded to their full capacity, with the bunkers collapsed as when the bunkers are permitted to stay in position in which you find them when the cars are refrigerated.

Mr. Mortensen: Speaking of lemons only?

Mr. Durbrow: Of lemons.

Mr. Mortensen: I should say that lemons would carry just as well with the tank collapsed as they would with the tank open.

Mr. Durbrow: You are traffic manager of this Association?

Mr. Mortensen: Yes sir.

Mr. Durbrow: And have charge of the manner in which shipments are loaded?

Mr. Mortensen: No sir.

Mr. Durbrow: Who has charge of that?

Mr. Mortensen: Each individual shipper has to a certain extent charge of that, but at the same time they usually accept our recommendations as to the method of loading.

Mr. Durbrow: Do you know whether or not the shippers
1538 represented by you would be willing to guarantee to move all their shipments of lemons forward to destination with the bunkers collapsed?

Mr. Mortensen: Yes sir.

Mr. Durbrow: They would?

Mr. Mortensen: Yes sir; they would—that is, with this provision, I might say, that the cars be spotted at the packing house with the tanks collapsed. Our shippers will load the cars two tiers

high and six wide, the full length of the car, as it placed at the packing house.

Mr. Durbrow: I want to direct your attention for a moment to your statement, Exhibit No. 5. Please explain what you mean by "per net ton mile"?

Mr. Mortensen: While I might be able to explain that, Mr. Durbrow, I would rather you would use Mr. Dezell on those figures. While I helped on them, I am not entirely familiar with all the figures in those statements.

Mr. Durbrow: I just wanted to know how you figured that. That is all, Mr. Chairman.

Mr. Dillard: Mr. Mortensen, you have testified to the movement of cantaloupes, the amount of ice they carry, the short time in which they have to be assembled, and the expense attend-
1539 [ant] upon that movement, all of which propositions are recognized. Your counsel referred to the fact that he desired to compare the cantaloup rate with the lemon rate.

It is true, is it not, that cantaloupes, in reaching their markets of consumption, come into competition with cantaloupes produced practically in various times of the year and almost over the whole country, as for instance, cantaloupes produced in Colorado and produced in Texas, and they have to meet the home competition that is not met by lemons?

Mr. Mortensen: That is not the case, Mr. Dillard, with the cantaloupes from the Imperial Valley. They do not come in competition with cantaloupes from Colorado. They might come in competition with some from Florida, but I do not know what the volume is from Florida. The fact is that when the California cantaloupes are once on the market, there are very few others sold during the time they are on the market.

Mr. Dillard: That is because it is a better cantaloupe?

Mr. Mortensen: You know Colorado is later. They come on afterwards.

Mr. Dillard: Colorado is much later, but I only used that as an illustration. Cantaloupes are produced practically over the whole country, are they not?

1540 Mr. Mortensen: Yes, they are produced generally over the country.

Mr. Dillard: Produced largely in Florida and in some of the other southern states, and largely in Texas, are they not?

Mr. Mortensen: Yes sir.

Mr. Dillard: The same thing is true, is it not, of vegetables and deciduous fruits?

Mr. Mortensen: It is true to a certain extent.

Mr. Durbrow: Mr. Mortensen, can you state the number of cars which your shippers have loaded with bunkers collapsed during the last season?

Mr. Mortensen: No, I cannot.

Mr. Durbrow: Can you approximate it?

Mr. Mortensen: I have not paid very much attention to that in the last year.

Mr. Durbrow: Do you know whether or not any have been loaded in that manner except for the purpose of experiment?

Mr. Mortensen: Yes, sir; I know there have been none loaded that way except for experiment.

Mr. Durbrow: That is all, your Honor.

Mr. Norton: If the Commission please, I would like to have the noon recess at this time for examination of these Exhibits
1541 which have been offered, before cross-examining this witness. These tables were just handed to us a few moments ago, and I would like to look them over before asking some questions about them after the recess.

The Chairman: Can you not proceed now for a few moments?

Mr. Norton: I will endeavor to take up the intervening time, if it is your desire.

The Chairman: If there are other questions you can ask, you may proceed for a few moments.

Mr. Norton: Mr. Mortensen, you stated on your direct examination that decay in oranges and citrus fruits occurred from which I inferred—I may not have gotten the correct inference—that it proceeded from these cars with the bunkers collapsed. Do you want us to understand that?

Mr. Mortensen: I stated I had made a test of our shipments that moved under ventilation for the month of March of last season, which is a heavy ventilating month of the year, and I found that, taking out orange shipments as a whole, eliminating lemons, for there was no decay in the lemons anyway during the month of March—that is, no appreciable decay—that the decay in oranges we shipped in collapsible bunkers was approximately one per cent greater than oranges shipped in the old style cars or the old
1542 style bunkers.

Mr. Norton: Have you seen the reports of the Department of Agriculture about the increase of decay in your product in California on account of a falling down of the care which you have been exercising in handling?

Mr. Mortensen: No sir; I have not.

Mr. Norton: You have not seen that?

Mr. Mortensen: No, sir; I have not.

Mr. Norton: Let me tell you that an extraordinary decay was found by the Department of Agriculture, and the report is out and I have read it. The people who handle this fruit are taken to task quite sharply for having neglected the precautions and careful handling which had in previous years reduced decay from 40 to 50 per cent to nothing. These conditions are returning, owing to carelessness in handling; so that I wanted to place this decay question——

Mr. Mortensen: The decay feature is not a very big feature. The record of the California Fruit Growers' Exchange shows in 1909-10 only .5 of one per cent decay, and in the year 1910-11 it was 2.1 per cent of decay.

Mr. Norton: How long a haul is there on cantaloupes from the Imperial Valley country? How far east do they go?

1543 Mr. Mortensen: They go to the Atlantic Seaboard.

Mr. Norton: The bulk of them go where?

Mr. Mortensen: I have never figured that, but I should say the distribution on cantaloupes, so far as territory is concerned, would be very much the same as on oranges; but practically all of the cantaloupes are sold in the larger markets. They are not scattered out to the smaller cities.

Mr. Norton: You never made any calculation to know whether they stop back at Denver and Kansas City and St. Louis?

Mr. Mortensen: I have never made any calculation, but I know by experience I have had in handling them and handling the records that a very large percentage of them go to the Atlantic Coast.

Mr. Norton: A large percentage of them?

Mr. Mortensen: Yes.

Mr. Norton: How large a percentage? Could you estimate that?

Mr. Mortensen: I should say at least twenty per cent. go to points east of a line north and south through Harrisburg, or probably more than that.

Mr. Norton: In estimating the average haul of the oranges and the average haul of the lemons by which you got at something
1544 like 450 miles difference, what mileage did you take? How did you get at the average haul for the oranges, for example? How did you figure that as a matter of figuring?

Mr. Mortensen: It was figured by taking the number of cars sold at each market.

Mr. Norton: What mileage did you take for that market?

Mr. Mortensen: We took the mileage as indicated by the direct route to that market.

Mr. Norton: By the short route to that market?

Mr. Mortensen: I think you can get that from Mr. Dezell. He can state just what routes they used in working that up.

Mr. Norton: You did not take the actual route followed by the particular car to destination?

Mr. Mortensen: I know we did not take each car and make our record from each individual car. We took the number of cars sold in each market, so of course we could not have had the actual mileage of each car. It would have been a pretty big job to do that.

Mr. Norton: This is a big job we have before us, and we must not balk at anything.

Mr. Call: If we sold half the cars east of Wheeling and half the cars west of Wheeling, why would not that be the aver-
1545 & 1546 age haul?

Mr. Dillard: The reason it is not is that our figures differ considerably from yours, and I understand the Santa Fe people have made figures of the actual mileage, and yours, as I understand now from the witness, are but an estimate.

Mr. Norton: If a carload of oranges, Mr. Mortensen, were shipped from Southern California and were to be routed by you up through the Ogden gate way, or even up through the Portland gateway, or some other northern region, and afterwards were to get down into a more southerly part of the United States, would you, in your esti-

mate, have taken into consideration the circuitous route the car traveled, or the short route to point of destination?

Mr. Mortensen: In the first place, you cannot route a car via Portland and then get back into Southern territory with it.

Mr. Norton: Into a lower territory than Portland?

Mr. Mortensen: I do not think you can get lower after you get up there.

Commissioner Prouty: He testified his computations referred only to lemons and oranges moving under the $1 and 1.15 rate.

Mr. Norton: But I want to know how he got the mileage and how he got this difference of 450 miles, and I was asking him
1547 to state by what mathematical process he found that an average haul of lemons is 2200 miles?

Commissioner Prouty: I think he has already stated he found the place where the lemons were sold, and draws a line north and south, and states so many lemons were sold east of that line and so many were sold west of that line; that he then finds where the oranges were sold, and draws another line and says so many oranges were sold east of that line and so many were sold west of that line. The haul of the lemons determined in that way is subtracted, and the difference in mileage is obtained in that way.

Mr. Norton: Mr. Mortensen, if you draw a line on the map east of which 50 per cent of your lemons go, and west of which 50 per cent. of your lemons go——

Mr. Mortensen (interrupting): I would rather you would inquire of Mr. Dezell with reference to that.

Mr. Call: Mr. Dezell did the actual work on that, and he is here and will testify.

The Chairman: We will take a recess at this time until 2 o'clock this afternoon.

refrigeration.

(Thereupon, at 12:30 o'clock p. m., a recess was taken until 2 o'clock p. m.)

1548 After Recess.

Upon the expiration of the recess the Commission resumed its session.

The Chairman: The witness will resume the stand, and Mr. Norton, you may proceed with the examination.

A. M. MORTENSEN resumed the stand for further examination.

Mr. Norton: Mr. Mortensen, as I understand your testimony in chief, it was that there were about 18,000 refrigerator cars in all kinds of California service, a third of which contained these collapsible bunkers?

Mr. Mortensen: A little less than a third.

Mr. Norton: Did you have anything to do in assisting Mr. Barnwell, of the Santa Fe Freight Department, at Los Angeles, in putting these collapsible bunkers to a test as to efficiency?

Mr. Mortensen: No; I did not, Mr. Norton, except that I arranged with our shippers to furnish the fruit on a very short test that he made, this spring, only covering some twelve or fourteen cars.

Mr. Norton: Do you know what the result of the test was?

Mr. Mortensen: I do not remember just what the result was.

1549 Mr. Norton: Do you know of any recommendation made by Mr. Barnwell respecting the use of those collapsible bunkers?

Mr. Mortensen: No; I do not.

Mr. Norton: You have prepared no data, as I understood, to show how many of these cars with collapsible bunkers, you have been loading from end to end?

Mr. Mortensen: No; I have not.

Mr. Norton: But they have been relatively insignificant in number, have they not?

Mr. Mortensen: Yes sir.

Mr. Norton: If I recall your testimony in a former hearing of this perennial litigation, you said that the shippers wanted to put small loads in the cars; that they marketed the better, and that these large loads in cars with collapsible bunkers, would not be desirable, generally?

Mr. Mortensen: I may have stated that at that time, Mr. Norton, but since then I have found that the marketing feature of it really does not enter into it. I have found that by experience with the shippers.

Mr. Norton: With the bunkers up, you said that these cars are not so satisfactory as ventilators. Are they so satisfactory as ventilators when the bunkers are down? Are they then as satisfactory

1550 as the old-style refrigerator car?

Mr. Mortensen: They are so near as satisfactory that I do not think it would make a bit of difference with the bunkers down. In other words I believe that, with the bunkers down, with the ventilating device properly handled, the citrus fruit, either oranges or lemons, can be transported safely in them as they are now.

Mr. Norton: Recalling again your testimony as I remember it, introduced before the Commerce Court, you stated that the service which we rendered on lemons on this business is substantially the same as that which we render on oranges?

Mr. Mortensen: I believe I did, yes sir.

Mr. Norton: Taking up Mortensen Exhibits 1 to 10, introduced this morning, the second page of which I call your attention to, you have shown that the percent of iced lemon cars runs about 13.9?

Mr. Mortensen: For the two years.

Mr. Norton: You compared 1910 and 1911?

Mr. Mortensen: Yes sir.

Mr. Norton: In 1910 you had ah abnormally low lemon crop, did you not?

Mr. Mortensen: I do not know that it was an abnormally

1551 low lemon crop. There was an abnormally low percentage of ice that year, I think.

Mr. Norton: What do you know about the size of the crop as compared with the average?

Mr. Mortensen: The crop this year is very much larger.

Mr. Norton: Was it not very much larger the year before?

Mr. Mortensen: It was some larger the year before.

Mr. Norton: You have compared here, to get this 13.9 percent, .06 per cent. in 1910 against nearly 9 per cent. in 1911?

Mr. Mortensen: Yes.

Mr. Norton: Is it not a fact that the 9 per cent. in 1911 is very nearly normal?

Mr. Mortensen: No sir; I think not.

Mr. Norton: So, in the refrigeration of oranges, you have compared the 48 per cent. in 1910 with 58 per cent. in 1911?

Mr. Mortensen: Yes.

Mr. Norton: That is to say, you have taken the percentage of lemons in the season as we shall show, of an abnormally small crop, and compared it with the same season of oranges for a very heavy crop?

1552 Mr. Mortensen: The 1909 and 1910 crop was not a particularly heavy crop.

Mr. Norton: It was the average crop, increasing from year to year, was it not?

Mr. Mortensen: It was a less crop than the year previous, considerably.

Mr. Norton: So that, in getting at the percent, as I understand this Table 2, to show that the refrigeration of lemons is far below that of oranges, you have taken the year 1910 which, as we shall show, is an abnormally small year for lemons, and a very good year for oranges?

Commissioner Prouty: What do you mean by abnormally small?

Mr. Norton: A small crop.

Commissioner Prouty: Would not the proportion be the same in the case of a small crop as in the case of a large crop?

Mr. Norton: The percentage?

Commissioner Prouty: Yes.

Mr. Norton: No; not necessarily.

Mr. Call: Why not?

Mr. Norton: In getting the averages of the two percentages.

Commissioner Prouty: But what they state there was not a percentage. Why would the percentage vary whether the crop

1553 was large or small? Why would not the percentage of a small crop be the same as the percentage of a large crop?

Mr. Norton: That might be true for a single year, Mr. Commissioner. The point I make is that he has taken the percentages of lemons in a very small year and a very large year to make an average. Then he has taken two years of oranges, both of which are large, to get the average of the oranges. So that he shows, for two years, a high orange percentage and a low lemon percentage. That could not possibly follow.

Mr. Mortensen: If you please, the orange crop of 1909 and 1910, as I remember it, was a smaller crop in proportion to previous years

and the year after in about the same proportion that the lemon crop was a smaller crop.

Mr. Norton: We shall give that exactly, so that there will be no guess work about it.

Turning now, to Exhibit 3, page 3, this deals with the average load of lemons in 1909, 1910 and 1911, iced and ventilated cars; what the average load would have been if collapsible tank cars had been used or ventilated shipments loaded fully, inside length.

I will pass that, because you say that you have not loaded except in comparatively few instances those collapsible cars that
1554 were furnished.

Turning to Exhibit 4, showing the capacity of the refrigerator equipment in service on the Southern Pacific, Santa Fe and Salt Lake, when loaded with lemons in boxes, giving the number of our cars, you show that the Santa Fe has 2,550 and for the S. F. R. D. series numbers you give here show 1,050. Do you know whether or not that is a typographical error?

Mr. Mortensen: It must be. I took the figures from the official equipment register.

Mr. Norton: Our people think we have 2,500 cars.

Mr. Mortensen: 2,500 I am sure is correct.

Mr. Norton: Exhibit 8, showing the center of distribution for the season 1909 and 1910, including only districts to which the one-dollar freight rate applied on lemons, half of St. Louis and east of the Mississippi River.

What does that last line mean—"half of St. Louis and east of the Mississippi River?"

Mr. Mortensen: Those were made by Mr. Dazell, and I think he can give you better information in regard to that than I can. I helped him on it, and know, in a general way, but I think he can tell you exactly how it is arrived at.

Mr. Norton: You have not studied this at all?
1555 Mr. Mortensen: I have, yes sir.

Mr. Norton: Did you notice that he has included in the column marked "west" 41 cars to Spokane, 11 cars to — and Boise City, 23 cars to Salt Lake City, 27 cars to Butte, Montana?

Mr. Mortensen: I think they all take the dollar rate.

Mr. Norton: Do they take this Trans-Continental Tariff rate?

Mr. Mortensen: Not necessarily.

Mr. Norton: No. They are not in this litigation, are they?

Mr. Mortensen: No.

Commissioner Prouty: The Salt Lake rate is.

Mr. Norton: Yes; but not this——

Mr. Mortensen: He has taken everything that takes the dollar rate. It may be that some few cars have gone to a territory that is not affected by this litigation.

Mr. Norton: We were trying to find the center of distribution under these Trans-Continental tariffs, and not under other tariffs.

Mr. Lamb: What difference does it make what the tariff is, so long as it is the dollar tariff?

Mr. Norton: We want to find the average haul of oranges and

lemons under the Trans-Continental tariff, and under no
1556 other tariffs.

This sheet 6, before I leave it, shows in the column marked "west", 1375 carloads of lemons, and in the column marked "east" 1371.

As I understood you this morning, you shipped about 6,000 carloads of lemons that year?

Mr. Mortensen: Not the California Fruit Growers' Exchange.

Mr. Norton: How many did you ship that year?

Mr. Mortensen: What year?

Mr. Norton: 1909 and 1910?

Mr. Mortensen: I do not remember; but some 3500 cars, I believe.

Mr. Norton: You have accounted for, in this estimate of distance, only 2746.

Mr. Mortensen: Probably the rest of them went to the Pacific Coast points and some points taking a higher than the dollar rate, such as southeastern territory, which takes a much higher rate.

Mr. Norton: You have accounted here for 2746 cars, and you mean that the remainder of the 3500 might have moved under some other tariffs than these?

Mr. Mortensen: That tariff might have been included, but
1557 that is the cars that went to points taking the dollar rate.

There are some points that take more than the dollar rate, and there are some points that take less, that would not be included in that.

Mr. Norton: But does this table include all the cars moving under the Trans-Continental tariff at a dollar?

Mr. Mortensen: It does, I believe, yes sir.

Mr. Call: That is, shipped by the exchange?

Mr. Norton: Yes.

Mr. Mortensen: Yes.

Mr. Norton: Table 9, in like manner, relating to oranges, shows 14,461 cars in 1909 and 1910. How many did you move, all together, of oranges, in that year?

Mr. Mortensen: I do not remember.

Mr. Norton: About 35,000?

Mr. Mortensen: No. We did not move anywhere near that. The total crop was about 35,000, of which we moved about 57 or 58 per cent, or somewhere along there.

Mr. Lamb: I have that here in boxes, if you want it. I have not got it in cars.

Mr. Norton: I think we have it on some of our exhibits, exactly.

1558 Then, for the following season, 1910 and 1911, when you got at the center of distribution of lemons, you used a table similar to that which I have just reviewed, and include shipments to Spokane, Boise City, Salt Lake and Butte, which shipments did not move under the tariff in litigation here.

Returning, for a moment, to the collapsible bunker again: Has it not been raised as an objection to the use of them that sometimes

when a refrigerated load is put in transit it becomes necessary to ice it under a change of weather?

Mr. Call: A ventilated load, you mean?

Mr. Norton: When a car with bunkers up has been loaded as a ventilated load, a change of weather in the east may make it necessary to ice the car?

Mr. Mortensen: That argument has been used, Mr. Norton, but it is so weak an argument that there is absolutely nothing in it; because there is not, I believe, one-tenth or one-hundredth of 1 per cent of the cars that are moved under refrigeration that are put under refrigeration en route. I am speaking of citrus fruit. After a car has started out under ventilation and has gone a portion of the journey, it will seldom help it any to put it under ice then.

Mr. Norton: Weak as the argument may be, my recollec-
1559 tion is that it came from those shipping people as one of the reasons they had not used it?

Mr. Mortensen: I do not know as to that.

Mr. Norton: I think that is all I desire to ask Mr. Mortensen now. I want to ask the compiler of these tables some question later.

Mr. Call: Have you made any investigation, since your testimony this morning, with regard to the percentage of citrus fruit that is gathered between Los Angeles and San Bernardino?

Mr. Mortensen: Yes sir.

Mr. Call: What is that percent, and what is the distance?

Mr. Mortensen: I find that practically, or approximately, 90 per cent of all the citrus fruit from California originates in a territory between Los Angeles and San Bernardino, including the Red Lands, a district about 65 miles long.

Mr. Dillard: How far north and south?

Mr. Mortensen: About 35 miles.

Mr. Call: It is on either of these lines of railway between Los Angeles and San Bernardino?

Mr. Mortensen: Yes sir.

And on lemons, about 75 per cent originated in that district. There are about 1200 cars of lemons that originated or did
1560 last year, in the San Diego District; about 850 in what is known as the Santa Barbara district, and about 150 or 250 in the Tulare County district.

Mr. Call: In speaking of the assembling of deciduous fruit, you spoke of the water haul. Is the water haul on the river assorbed by the railroads in their Trans-Continental rate, or is there a separate charge?

Mr. Mortensen: I think it is absorbed. The tariffs will show. I am not positive on that.

Mr. Call: Part of the deciduous loads are gathered by water, are they?

Mr. Mortensen: Yes.

Mr. Call: Is it rail and water up to the assembling point, or simply water on above.

Mr. Mortensen: It is, I think, all water to the assembling point, or practically so.

Commissioner Lane: Is there any very great volume of that that is gathered by water?

Mr. Mortensen: There is quite a percentage of it comes up the river and is assembled at either Sacramento or Stockton, and loaded on cars there.

Commissioner Lane: That does not cover any of
1561 & 1562 the fruit from Santa Clara?

Mr. Mortensen: No sir.

Commissioner Lane: There is not a very great deal of fruit that comes out of Santa Clara in its natural state, is there?

Mr. Mortensen: From the Santa Clara Valley there is,—I do not know what the per cent is—but San Jose loads a large number of cars each season, particularly of cherries and peaches, and a great many prunes.

(The witness was thereupon excused.)

(The exhibits used and referred to during the examination of Mr. Mortensen were marked Exhibits Mortensen 1 to 10, November 15, 1911, and are in the words and figures following to-wit:)

1563 & 1564 *Index Plaintiffs' Exhibits.*

	Pages
Monthly shipments all California Oranges and lemons Seasons, 1909-10 and 1910-11	1
Percentage Iced and Ventilated shipments, Average Load, Average decay, and Total decay Claims Collected on shipments Oranges and Lemons made through California Fruit Grower's Exchange Seasons—1909-10 and 1910-11	2
Average Load per car Lemons shipped through California Fruit Grower's Exchange and what average Load per car would have been had collapsible tank cars been used on ventilated shipments and loaded full inside length of car Seasons, 1909-10 and 1910-11	3
Loading capacity refrigerating equipment in use California Service	4
Comparative Rates and Earnings on Lemons with other Pacific Coast Commodities	5
Center Distribution of Lemons and Oranges Shipped through California Fruit Grower's Exchange Lemons, Seasons 1909-10	8
Oranges, Seasons, 1909-10	9
Lemons, Seasons, 1910-11	6
Oranges, Seasons 1910-11	7
Map showing line of distribution	10

1565 & 1566 *Statement of California Orange — Lemon Shipments by Months, Seasons* 1909-10 *and* 1910-11.

	1909–1910.		1910–1911.	
	Oranges.	Lemons.	Oranges.	Lemons.
November	1269	281	1925	485
December	2292	369	3485	284
January	2745	422	3803	402
February	3005	263	4839	423
March	4465	474	6313	584
April	4755	518	5751	838
May	4051	414	5861	1011
June	2510	795	3353	1181
July	1221	511	1851	716
August	792	398	1033	351
September	467	223	692	284
October	679	223	601	297
Totals	28252	4891	39507	6856

1567 & 1568 *Comparative Statement Showing Percentage Iced and Ventilated Shipments, Average Days Out, Average Decay, Average Number Boxes Per Car, and Total Decay Claims, Lemons and Oranges, Seasons* 1909-10 *and* 1910-1911.

Lemons.

Year—	Iced.	Vent.	% iced.	Average days out.	Average boxes in car.	Average decay.	Total decay claims.
1909-1910 ..	184	2738	.062	11.2	331	.008	$506.81
1910-1911 ..	865	3713	.188	11.2	333	.017	530.00
Total..	1049	6451	.139	11.2	332.22	.0142	$1036.81

Oranges.

1909-1910 ..	7327	7856	.482	11.3	396	.005	$2374.00
1910-1911 ..	12391	9011	.58	11.3	396	.021	10355.71
Total..	19718	16867	.538	11.3	396	.0144	$12729.71

1569 & 1570 *Statement Showing Average Load Lemons, Seasons 1909-10 and 1910-11, Iced and Ventilated Cars, and what Average Load Would Have Been if Collapsible Tank Cars Had Been Used on Ventilated Shipments and Loaded Full Inside Length.*

As Loaded

	Cars.	Average boxes.	Boxes.
Iced	1049	322.22	348,498
Vent.	6451	322.22	2,139,521
Total	7500	322.22	2,488,019

If Collapsible Tank Cars Had Been Used on Ventilated Shipments.

Iced	1049	322.22	348,498
Vent.	5244	408.	2,139,521
Total	6293	395.3	2,488,019

1571-1572 *Statement Showing Capacity of Refrigerator Equipment Now in Service on Southern Pacific, Santa Fe and Salt Lake R. R. when Loaded with Lemons in Boxes.*

Tanks stationary.				Tanks collapsible.			
Initial of car.	Series.	No. cars.	Capacity in boxes loaded with lemons 6 wide and 2 high.	Initial of car.	Series.	No. cars.	Capacity in boxes loaded with lemons 6 wide and 2 high.
P. F. E.....	1 to 7100	7100	336	P. F. E.....	7101–10121	3021	408
S. F. R. D.....	1320 to 7200	5880	324	S. F. R. D.....	7201 to 8250	2550	408

1573 & 1574 *Comparative Statement Showing Rates and Earnings on Lemons 336 and 408 Box Loads with Vegetables, Deciduous Fruits, and other Pacific Coast Commodities, for 2,000 and 3,200 Mile Hauls.*

2,000 Mile Haul.

Commodity—	Kind of car.	Minimum.	Rate.	Per car.	Per car-mile.	Per net ton-mile.	Per gross ton-mile.
Lemons ...	Rfg.	28224	1.00	282.24	.14112	.01	.004035
Lemons	"	34272	1.00	342.72	.17136	.01	.0045105
Cantaloupes	"	20000	1.00	200.00	.10	.01	.00324
Celery	"	20000	1.00	200.00	.10	.01	.00324
Tomatoes ...	"	20000	1.00	200.00	.10	.01	.00324
Cabbages ...	"	24000	.75	180.00	.09	.0075	.002739
Potatoes	"	30000	.75	225.00	.1125	.0075	.003137
Onions	"	30000	.75	225.00	.1125	.0075	.003137
Apples	"	30000	1.00	300.00	.15	.01	.0041835
Deciduous Fruit	"	26000	1.15	299.00	.1495	.0115	.0043
Beans	box	40000	.85	340.00	.17	.0085	.00425
Canned Gds.	"	40000	.85	340.00	.17	.0085	.00425
Wine	Rfg.	30000	.75	225.00	.1125	.0075	.003137

1575 & 1576 3200 Mile Haul.

Commodity—	Kind of car.	Minimum.	Rate.	Per car.	Per car-mile.	Per net ton-mile.	Per gross ton-mile.
Lemons	Rfg.	28224	1.00	282.24	.0882	.00625	.002522
"	"	34272	1.00	342.72	.1071	.006625	.002819
Cantaloupes	"	20000	1.25	250.00	.078125	.0078125	.002207
Celery...	"	20000	1.25	250.00	.078125	.0078125	.002207
Tomatoes	"	20000	1.25	250.00	.078125	.0078125	.002207
Apples..	"	30000	1.00	300.00	.09375	.00625	.0026147
Deciduous Fruit..	"	26000	1.15	299.00	.0934	.00718	.002746
Wine....	"	30000	.75	225.00	.0703	.0046875	.001961
Beans..	box	40000	.85	340.00	.10625	.0053125	.0026565
Canned Goods	"	40000	.85	340.00	.10625	.0053125	.0026565

1577-1578 *Center of Distribution,* $1.00 *Freight Rate Applied. Season* 1909-10.

Lemons.

A Line North and South a Little West of Chicago.

West.		East.	
Spokane	59	Boston	279
Boise	10	Providence	32
Roswell	2	New York	236
Salt Lake	31	Albany	22
Butte	19	Baltimore	115
Denver	108	Philadelphia	106
Amarillo	7	Scranton	44
San Antonio	52	Syracuse	26
Ft. Worth	158	Harrisburg	24
Wichita	93	Washington	20
Oklahoma	80	Buffalo	134
Houston	17	Pittsburg	161
Sioux Falls	2	Cleveland	147
Sioux City	71	Columbus	74
Omaha	180	Detroit	92
Joplin	42	Toledo	60
Kansas City	296	Bay City	38
Shreveport	8	Cincinnati	153
Little Rock	17	Louisville	43
Des Moines	150	Grand Rapids	40
Minneapolis	336	Indianapolis	77
Waterloo	27	Evansville	8
St. Louis	172	Chicago	220
New Orleans	26		
Memphis	18		
Peoria	88		
Milwaukee	75		
Chicago	123		
Total	2144		2144

1579-1580 *Center of Distribution,* $1.15 *Freight Rate Applied. Season* 1910-11.

Oranges.

A Line North and South Through Center of Wheeling, W. Va.

West.		East.	
Spokane	130	Boston	1532
Boise	48	Providence	1146
Roswell	6	New York	2805
Butte	146	Montreal	297
Denver	294	Albany	342
Amarillo	10	Philadelphia	699
San Antonio	186	Roanoke	43
Wichita	177	Scranton	367
Oklahoma	253	Syracuse	170
Ft. Worth	378	Baltimore	289
Sioux Falls	18	Harrisburg	174
Sioux City	183	Washington	106
Omaha	381	Richmond	193
Houston	202	Buffalo	753
Joplin	119	Toronto	562
Kansas City	641	Pittsburg	925
Shreveport	77	Wheeling	79
Minneapolis	996		
Des Moines	423		
Little Rock	102		
Waterloo	133		
St. Louis	586		
New Orleans	122		
Memphis	112		
Peoria	276		
Milwaukee	395		
Chicago	1205		
Evansville	73		
Indianapolis	429		
Grand Rapids	117		
Louisville	155		
Bay City	95		
Cincinnati	363		
Toledo	209		
Detroit	361		
Columbus	312		
Cleveland	707		
Wheeling	38		
Total	10458		10444

1581–1582 *Center of Distribution, Season* 1909-10, *Including Only Districts to which the* $1.00 *Freight Rate Applied.*

Lemons.

Half of St. Louis and East of Mississippi River.

West.		East.	
Spokane	41	Boston	113
Boise	11	Providence	9
Salt Lake	23	New York	33
Butte	27	Albany	1
Denver	120	Philadelphia	34
Amarillo	6	Scranton	14
San Antonio	33	Syracuse	14
Ft. Worth	94	Harrisburg	8
Wichita	108	Washington	4
Oklahoma	70	Buffalo	90
Houston	7	Pittsburg	64
Sioux Falls	6	Cleveland	104
Sioux City	49	Columbus	50
Omaha	116	Detroit	66
Kansas City	201	Toledo	46
Shreveport	4	Bay City	30
Little Rock	13	Cincinnati	61
Des Moines	92	Louisville	19
Minneapolis	260	Grand Rapids	27
Waterloo	23	Indianapolis	62
St. Louis	71	Evansville	16
		Chicago	287
		Milwaukee	47
		Peoria	71
		Memphis	13
		New Orleans	16
		St. Louis	72
	1375		1371

1583-1584 *Center of Distribution, Including only Districts to which* $1.15 *Freight Rate Applied. Season* 1909-10.

Oranges.

A Line North and South Through Center of Detroit and Just West of Columbus.

West.		East.	
Spokane	101	Boston	1053
Boise	37	Providence	676
Salt Lake	97	New York	1432
Butte	142	Montreal	167
Denver	229	Albany	282
Amarillo	35	Philadelphia	375
San Antonio	112	Scranton	231
Wichita	219	Baltimore	134
Oklahoma	192	Syracuse	118
Ft. Worth	266	Washington	55
Sioux Falls	18	Harrisburg	89
Sioux City	166	Richmond	102
Omaha	349	Buffalo	574
Houston	131	Toronto	329
Kansas City	474	Pittsburg	622
Shreveport	51	Wheeling	52
Minneapolis	875	Cleveland	446
Des Moines	360	Columbus	323
Little Rock	68	Detroit	146
Waterloo	113		
St. Louis	496		
New Orleans	87		
Memphis	92		
Peoria	212		
Milwaukee	308		
Chicago	981		
Evansville	47		
Indianapolis	278		
Grand Rapids	85		
Louisville	74		
Bay City	70		
Cincinnati	194		
Toledo	150		
Detroit	146		
			7206
Total	7255		

1584½ The Chairman: Call your next witness.

Mr. Call: I wanted to say that, in response to your petition of counsel for the carriers we produced and have handed to them, all the information we could gather in the time at our disposal. We have furnished them with all the reports which the California Fruit Growers' Exchange and some of the others have on hand or could gather in the time available. We have furnished that to them. In addition to that, we have brought Mr. Powell here, who has charge of the statistical work of the Protective League embracing the whole industry, to answer any questions, they may want to ask. He has had a large force at work all summer and fall gathering this data, and is quite well informed.

We have also Mr. Dezell here. In view of the attitude of counsel before the Court, and the attitude of the Courts on this question, we do not care to offer any testimony dealing with the condition of the industry, but the information is here, and they can have it if they so desire.

The Chairman: Have you any other testimony to offer?

Mr. Call: That is all the testimony we care to offer.

The Chairman: Then we will hear from the defendant carriers.

1585 *Testimony on Behalf of the Defendants.*

Mr. Norton: I would like to question Mr. Dezell about these average distances.

E. G. DEZELL was called as a witness and having been duly sworn, testified as follows:

Mr. Norton: Mr. Dezell, turn to page 6 of Mortensen Exhibits 1 to 10, please, and explain how you got the average distances, if that is what it is, of the lemons hauled in 1909 and 1910, under the dollar rate.

Mr. Dezell: This does not refer to any particular season, nor does it state that it is an average distance.

Mr. Norton: It refers to the season of 1909 and 1910, in the first line.

Mr. Dezell: Excuse me. I have the wrong page.

Mr. Norton: No. 6.

Mr. Dezell: I see.

Mr. Norton: It is called the center of distribution.

Mr. Dezell: They have taken a line west of which and east of which 50 per cent of the lemons shipped by the Exchange to points taking the dollar rate were disposed of.

1586 Mr. Norton: That is shown on the last map as a line down through St. Louis. I see you have 71 carloads of lemons sent to west of St. Louis, that is, on the west side of this exhibit, and 72 cars on the east side?

Mr. Dezell: Have you got the proper year?

Mr. Norton: 1909 and 1910.

Mr. Call: Those, I think, are not put in in exact order according to pages.

Mr. Dezell: I think they differ.

Mr. Call: Turn to the year.

Mr. Dezell: Yes. This is it; 1909 and 1910, lemons. That is what you refer to?

Mr. Norton: Yes; lemons 1909-1910, including only districts to which the dollar freight rate applies. Lemons, "half of St. Louis and east of the Mississippi River." That exhibit, as I understood it, is illustrated on the map by a red line drawn down across through the city of St. Louis?

Mr. Dezell: Yes, sir.

Mr. Norton: What have you put west of the line, as showing the center of the lemon district?

Mr. Dezell: These points that are shown on that page.

Mr. Norton: Among them, Spokane, Boise City, Salt Lake and Butte?

1587 Mr. Dezell: Yes sir; all points taking the dollar rate on lemons.

Mr. Norton: You understand that they do not take the dollar rate under the tariffs in litigation in this case?

Mr. Dezell: No; I guess it is covered in a separate tariff.

Mr. Norton: Passing by that, why did you select these particular points west of this medial line that you have drawn?

Mr. Dezell: Because they are located west of that line.

Mr. Norton: Does that mean all the points west of that line to which lemons were delivered?

Mr. Dezell: Points taking the dollar rate, yes sir.

Mr. Norton: Every point?

Mr. Dezell: Yes sir.

Mr. Norton: Does that account for every carload of lemons that was landed west of that line in that season?

Mr. Dezell: Taking the dollar rate, yes sir.

Mr. Norton: Were there any west of the line taking more than the dollar rate?

Mr. Dezell: I suppose there were a few up in Montana, and, perhaps, in Western Canada, where the rates are very high.

1588 Mr. Norton: Of the cities marked east of the line, Boston, Providence, New York, Albany and others, does that list include every point of destination of lemons east of this line in that season?

Mr. Dezell: This list is made up in the order of our districts, where we have representatives. For instance, our Boston office handles all of New England; and it does not show specifically the exact points to which these cars were destined. It shows it by districts—by our districts.

Mr. Norton: Does it show every car that was destined anywhere?

Mr. Dezell: Yes sir.

Mr. Norton: How many cars are shown on this exhibit, all together? It is 2746, is it not?

Mr. Dezell: Yes sir.

Mr. Norton: How many cars did your association ship of lemons in that year, at the dollar rate?

Mr. Dezell: At the dollar rate, that number.
Mr. Norton: How many cars did it ship all together?
Mr. Dezell: About 3,000, as I remember it.
Mr. Norton: Did you ship a car to Memphis, Tennessee, during that season? Do you know?
1589 Mr. Dezell: I could not say, positively.
Mr. Norton: Then the cities named on the part of the map east of the line are the centers of your distribution districts, as I understand.
Mr. Dezell: Where our agents are located, yes.
Mr. Norton: How far does the Boston agent operate, for example?
Mr. Dezell: He covers all of New England.
Mr. Norton: Where did you get this delivery of 113 in the Boston district? Was that from billing, or from the actual destination?
Mr. Dezell: From the sales. There were that many cars sold in our Boston territory.
Mr. Norton: What is included in the Buffalo district, to which you sent 90 cars?
Mr. Dezell: Buffalo would handle, west, Erie, Pennsylvania, and, east, including Rochester.
Mr. Norton: How far east does it go?
Mr. Dezell: I think that is about the eastern point—Rochester.
Mr. Norton: I thought you said west of Buffalo?
Mr. Dezell: Including Erie, I say, west of Buffalo; and,
1590 I think, east to Rochester. It sells to Bradford, Pennsylvania.
Mr. Norton: Pittsburgh shows 64 cars. Where is that territory?
Mr. Dezell: It covers Altoona. It is really east of Pittsburgh. Those few towns along the line of the Pennsylvania—Oil City.
Mr. Norton: And how far west?
Mr. Dezell: I do not believe he has any territory west of him. We have a separate agency at Wheeling.
Mr. Norton: What was the purport of this? For what reason did you prepare this page 6?
Mr. Dezell: It is a statement that we prepare every season, to show where that line is, westward and eastward of which 50 per cent of the fruit is sold.
Mr. Norton: Why did you introduce it before the Commission? What do you want the Commission to learn from this?
Mr. Dezell: To show, in connection with the statement on oranges, the comparison of that line where it hits the country, figured on the same basis.
Mr. Norton: This has nothing to do with the hauling of these various shipments—the mileage haul of lemons and the
1591 mileage haul of oranges?
Mr. Dezell: As a comparative statement, it would probably be of value for that.
Mr. Norton: But it does not deal with mileage as a fact or a factor?
Mr. Dezell: No sir.

Mr. Norton: The mileage factor is not in this table?

Mr. Dezell: No sir.

Commissioner Lane: That is owing to the fact that you have not followed the specific route that the car took?

Mr. Dezell: Of each car.

Commissioner Lane: Of each car.

Mr. Dezell: Of each car, yes sir.

Mr. Norton: The following table, respecting oranges for the same season, was made up in the same way, I suppose?

Mr. Dezell: Yes sir.

Mr. Norton: The table following that, being page 8 of the exhibit, respecting lemons for the following season, 1910 and 1911, was made up similarly?

Mr. Dezell: Yes sir; on the same basis.

Mr. Norton: This table disposes of 2,488 carloads of lemons in the last season 1910-'11. How many did your exchange
1592 ship in the same year?

Mr. Dezell: About 5,000 cars, approximately.

Mr. Norton: At the dollar and other rates?

Mr. Dezell: At all rates; that many cars loaded.

Mr. Norton: Give me the percentage, again, of lemons you handled?

Mr. Dezell: About 70 per cent.

Mr. Norton: Have you any idea of the percentage of lemons you shipped that moved at some other than the dollar rate?

Mr. Dezell: You can figure the difference; 4,288, and a total of 5,000. That is the approximate figure. I have not the exact number in my mind.

Mr. Norton: What percentage of the orange crop do you people handle? 70 per cent of the lemon crop; what percentage of the orange crop?

Mr. Dezell: Something a little less than 60. Of oranges and lemons together, we handled this last season about 61.

Mr. Norton: The table No. 9, the last one, respecting the oranges in the last season, 1910-'11, was made up as the others were prepared?

Mr. Dezell: Yes sir.

Mr. Norton: That is all I wanted to ask you.

1593 The Chairman: Do you desire to cross examine the witness at all?

Mr. Call: No.

Mr. Durbrow: I wish to ask him a few questions, if you please.

Mr. Dezel, I call your attention to that exhibit No. 5, and would like to have you tell us——

Mr. Call: Read the heading. His pages do not correspond to yours.

Mr. Durbrow: Very well. This is headed:

"Comparative Statement showing rates and earnings on lemons 336 and 408 box-loads, with vegetables, deciduous fruits and other Pacific Coast commodities."

Mr. Dezell: Yes; I have it.

Mr. Durbrow: Will you please explain how you computed the per net ton mile and per gross ton mile earnings?

Mr. Dezell: In the first division there is shown a sub-heading of 2,000 miles. We got the car mile earnings, and we got the earnings per car, and then per car mile and per net ton mile. It is on the freight that was hauled, the revenue freight, I suppose you call it.

Mr. Durbrow: The per net ton mile represented the revenue freight contained in the car, irrespective of the weight of the car itself?

1594

Mr. Dezell: The net ton mile, yes sir.

Mr. Durbrow: When you figured the per gross ton mile, that included the weight of the car?

Mr. Dezell: Yes sir.

Mr. Durbrow: As well as the commodity contained in the car?

Mr. Dezell: Yes sir.

Mr. Durbrow: Did you make any allowance for the return of that car, the hauling of the car empty, upon any percentage basis?

Mr. Dezell: No sir.

Mr. Durbrow: Not at all?

Mr. Dezell: No sir.

Mr. Durbrow: That is all.

(The witness was thereupon excused.)

The Chairman: Call your next witness.

Mr. Norton: From Mr. Lamb's statement, as I said this morning, I supposed they would at least take the day, and I can not go on in directly the order in which I wanted to proceed; but we can put in our time this afternoon. I was expecting a witness here from New York, and he has not yet arrived. I was also looking for an operating man; but, on second thought, it has occurred to me that he would not be needed. I think the Commission will admit the proposition that I wanted to establish by him, namely, that the heavy weight of the dead load we carry in this business, the expedited service which we give, the empty haul which we have westward and other things which go to make up this valuable service, cost us as much as our average freight costs. We say that it costs more.

1595

The Chairman: The Commission will have to determine these questions upon the facts appearing before it and can hardly, at this time, make anything in the nature of an admission.

Mr. Norton: The Commission is so familiar with this special point that I thought perhaps they would not care to have any testimony submitted upon it.

The Chairman: In a general way, of course we are familiar with it.

Commissioner Lane: We have a very full record in the case on the proposition of the westward movement of the empty cars, and the time it takes to move a car.

Mr. Norton: I can get a witness for that matter. I will prove it.

The Chairman: You may have it in the record already.

Mr. Norton: No; not on that exact point, Mr. Chairman.

1596

Commissioner Prouty: The record shows the movement of

these citrus fruit trains, the rapidity with which they move, and everything of that character.

Mr. Norton: Yes; but this direct statement is made only by a witness before the Commerce Court.

Commissioner Prouty: You might get somebody to swear to it, and that would show it.

Mr. Norton: I think the opinion of an expert man, who is handling all kinds of business, as an operating man, would suffice for that.

Commissioner Prouty: That would depend upon who the man was, and also upon what reason he gave for his belief.

The Chairman: We could hardly proceed upon the idea of admissions which would amount to findings, as we go along through the case.

Mr. Norton: No. I did not know whether you would want any testimony on that or not.

The Chairman: There may be an abundance of it in the record already, upon which you can draw your conclusion.

Mr. Norton: I shall put some additional testimony in, to cover that point.

1597 I will ask Mr. Peabody to take the stand, as I have some few tables that I desire to put in, in addition to those previously submitted.

JAMES PEABODY was called as a witness and, having been duly sworn, testified as follows:

Mr. Norton: In connection with the examination of Mr. Peabody I shall use a number of exhibits which will be offered at the conclusion of his testimony, and will be filed as "Peabody, Santa Fe Exhibit No. 1" to "Peabody Santa Fe Exhibit No. 12", both inclusive.

Mr. Peabody need not be qualified, I assume, because I think the Commission know who he is.

The Chairman: Yes.

Mr. Norton: Mr. Peabody, turn to the first page of this exhibit, which will be called Exhibit No. 1, and then the whole group of exhibits will be marked Exhibits 1 to 12, at the end.

Exhibit 1 shows the average haul on citrus into San Bernardino, season ending October 31, 1911.

That makes an average haul on lemons of 54 miles.

1598 Mr. Peabody: An average of 54 miles haul into San Bernardino, from the points of origin.

Mr. Norton: And the average haul on oranges is what?

Mr. Peabody: 27 miles.

Mr. Norton: That is the assembling service, that was talked about by Mr. Mortensen, this morning?

Mr. Peabody: That is the assembling service on the Santa Fe road, and embraces every car handled, the actual mileage of every car handled being considered.

Commissioner Lane: Where is your 27-mile figure?

Mr. Peabody: Right underneath the 54: "Oranges and grape fruit, average haul into San Bernardino, 27 miles."

Mr. Norton: Turning to Exhibit No. 2, showing the comparative rates and revenue per ton mile on California and Florida lemons from average points of origin to certain destinations on basis of present tariff rate from California, plus an assembling charge of 10 cents per 100 pounds, for the 54 miles average haul into the assembling point, San Bernardino. The Florida rate is based on the order of the Interstate Commerce Commission, effective April 15, 1910, using average origin, (253 miles) from the basing point, Jacksonville.

At the previous hearing you prepared, as I recall it, an
1599 exhibit comparing the rates fixed by the Commission in the Florida case with the California rate; without taking into account the free haul of the carriers for assembling the fruit at the shipping points; and this exhibit is to show the situation under the assumption that we were to have an assembling haul in southern California on the same basis as that allowed by the Commission in the Florida case. Give us the gist of that. What is the net result of it—the last line?

Mr. Peabody: The assembling charge allotted to the Florida computations is a trifle less than the amount which was stated by the Commission in its opinion to be the average haul into Jacksonville. They used the town of Arcadia, and it was 269 miles, as I remember, from Jacksonville. In order to avoid the conclusion which might be drawn from that particular illustration, namely, that the assembling charge into Jacksonville was on a different railroad from the transportation charge out of Jacksonville, I used one of the other roads, the Atlantic Coast Line, to Highgate, and took their main point of distribution, which was a place called Bartow, which was only 253 miles from Highgate, and which was the center of distribution and rates there, and also the center of the haul. That would
1600 make the allowance used here, in determining the Florida compensation, 1 cent less than it was in the illustration used by the Commission; because the 269 mile haul took a 1-cent higher arbitrary, according to the Commission's table than the 253 mile-haul did.

Commissioner Prouty: But those gathering rates are all based on Jacksonville. They are not based on High Springs, even though the——

Mr. Peabody: They are based on Jacksonville.

Commissioner Prouty: All of them; even when, under the old tariff, they based on High Springs the distance to Jacksonville determined the rate.

Mr. Peabody: But it would make the gathering charge for 253 miles 20 cents, instead of the 21 cents which was the arbitrary allowed by the Commission.

I also, after ascertaining that our assembling charge on the lemons was 54 miles, took the Commission's rate for that distance and added it to the dollar fifteen to make the average rate to the point named from the average point of production.

Mr. Norton: And after adding that supposed assembling charge, the rate from the Florida country to certain designated
1601 points, and the rate from the California country to the s[illegible] points, it shows how? Favorably or unfavorably to the California movement?

Mr. Peabody: They show, for illustration, that to Chicago which is a distance from the Florida basing point of 1081 miles, the rate is 91.2 cents per hundred pounds, or 1.367 mills per ton per mile; and to Chicago, from California, it would be $1.27½ cents per hundred pounds, with the assembling charge included, and with a rate per ton per mile of 1.151, or a little over two mills less per ton per mile than the Chicago rate. That is the basis on which the entire table was made.

Mr. Dillard: Disregarding your assembling charge there, your rate to Chicago is really $1.

Mr. Peabody: $1.15.

Mr. Dillard: For how many miles?

Mr. Peabody: For 2161 miles.

Mr. Dillard: As against the 91-cent rate from Florida for how great a distance?

Mr. Peabody: 1081 miles.

Mr. Norton: Turn to Exhibit No. 3, now.

Commissioner Lane: As you get down to the bottom
1602 the page, to Omaha. you find there that the rate from California to Omaha, a distance of 1850 miles, is 1.27½ cents per hundred pounds.

Mr. Peabody: It is the same rate, yes.

Commissioner Lane: And the rate per ton mile is 1.39?

Mr. Peabody: Yes.

Commissioner Lane: While from Florida, 500 miles shorter distance, the rate is 1.075 cents per hundred pounds, and the rate per ton per mile is 1.321.

Mr. Peabody: Almost the same.

Commissioner Lane: What is the point below that? The copy of the exhibit which I have before me is blurred.

Mr. Peabody: Cedar Rapids.

Commissioner Lane: What is the last figure, the rate per ton per mile, cents?

Mr. Peabody: For the Florida rate, 1.336; and for the California rate, 1.214. I thought it was only fair, Mr. Commissioner, to take these far points and the near points together, so that I showed all the points that would show against us just as well as those that would show in our favor, that being the only fair way to give the figures.

1603 Commissioner Lane: Denver is not included?

Mr. Peabody: Florida has no rate to Denver. I went as far west as the Florida rates went.

Mr. Dillard: The figures that you are now reading, that you have there, are with the supposed additional charge, if you made it, for the assembling?

Mr. Peabody: Yes sir; and also on the basis of the $1.15 rate.

Mr. Dillard: Rejecting that assembling charge, your distance to Omaha will be how much, your rate how much, your distance from Florida how much and your rate how much?

Mr. Norton: That is in the form of an exhibit.

Mr. Dillard: Yes; but I would like to have it in here, for easy reference. Have you not the distance there?

Mr. Peabody: I cannot give you all those figures from that exhibit. I can give you that from a former exhibit.

Mr. Dillard: I thought you had those figures in this exhibit?

Mr. Peabody: I only have the rate with the assembling charge added.

Mr. Dillard: The rate is $1.15 to Omaha, of course? And the distance is what?

1604 Mr. Peabody: 1374 miles from the base point in Florida; 1850 miles from the base point in California.

Mr. Dillard: And the rate $1.15, as against $1.07?

Mr. Peabody: And the rate is $1.15 as against $1.075.

Commissioner Lane: With a difference of 500 miles?

Mr. Dillard: Yes; I think so.

Commissioner Clark: Just what do you mean by the rate $1.15 as against $1.075?

Mr. Dillard: I mean that the rate from Florida is $1.075 on oranges.

Commissioner Prouty: That is the rate from the point of origin?

Mr. Dillard: From the point of origin, yes; that is the rate from the point of origin, because there — no assembling charge made on the California rate. Therefore, to repeat, from the point of origin to Omaha the rate is $1.15; and the distances are as shown on the table.

Commissioner Prouty: Why should there be any assembling charge, if the rates in both are from the point of origin?

Mr. Dillard: There is this difference, Mr. Commissioner: That you have allowed an assembling charge in Florida, and you get a certain rate from that point of origin; that we would be en-

1605 titled to make that same charge, according to the points of origin, increasing by little, it is true, but still by so much, that distance; and if the same principle that is adopted in Florida is adopted in the other instance, it would make our rate higher than it now is—if I understand your Honor's question.

Commissioner Prouty: Today the Florida rates are all published as through rates, just as your rates are.

Mr. Dillard: That is true; but that does not make the distance any less or any greater; nor does it vary the rate.

Commissioner Prouty: I understand that; but why should you talk about an assembling charge in one case and not in the other? If your rate is named from the point of origin, and the Florida rate is named from point of origin, the only question is what is the rate and the distance from point of origin?

Mr. Dillard: That is true; and if we allowed for that extra service, we would be entitled to a higher rate than we now get. The only point is to show that.

Commissioner Prouty: You would be allowed a higher rate than you now get if you were allowed from basing points the same rate you now charge from the point of origin; but you would
1606 not be allowed the same rate, possibly.

Mr. Dillard: We might not be; but I cannot believe that your Honors would make it that way. We might not be allowed it of course. It might be put at any figure. But surely it is competent to show that this service is done; and I do not care whether you add it on or not, it is a service of value, which does go to show the reasonableness of the $1.15 rate as compared with the $1.075 rate.

Mr. Norton: The point I am introducing it for is to make a comparison of the value of the service we are giving to these people as compared with the value of the service that has been given to other people that the Commission has dealt with; and for the benefit of the Commissioners who may not be familiar with the situation, I am going to put up this little map.

Commissioner Clark: To get back to the point mentioned by Mr. Dillard, it means this: From point of origin in Florida to Omaha the distance is 1627 miles, and the rate is 1.075 cents.

Mr. Dillard: The distance I do not remember.

Commissioner Clark: And from California the distance is 1904 miles, and the rate is 1.15.

Mr. Dillard: I do not know as to the distances.

1607 Commissioner Clark: I am reading the total distance. I think Mr. Peabody read the distance from the basing points. This table starts out with the distance from the basing point, and then gives the mileage average from point of origin to the basing point, and then the total mileage from the point of origin.

Mr. Dillard: In the case of the Florida distances?

Commissioner Clark: In both cases.

Mr. Peabody: Both are shown from the basing point and from the points of origin.

Mr. Dillard: I do not know what is shown there as to the distances.

Mr. Peabody: In other words, 54 miles is added in each case to the distance from the basing point:

Mr. Dillard: And the rate is $1.15, as against $1.075.

Mr. Norton: What I am getting at is that in the Florida case, starting with Jacksonville as a basing point, there was allowed a freight rate and reasonable mileages for getting the freight into the stopping point. In comparing the rate which we are furnishing to the complainants in this case, we wish the Commission to understand that lemons, a considerable quantity of them come from San Diego on our line.

1608 Here is the starting point, San Bernardino (indicating on map) and it is in this locality that this fruit is gathered up, by means of a costly service, for which no charge is made. Therefore, in making a comparison of the decision of the Commission in the Florida case, with the situation here, we wish the Commission to have, as far as it can be shown in dollars and cents, an idea of the gratuitous service which is performed here—the value of it in

dollars and cents, as well as the value of it to these people who are getting their fruit out.

San Diego is 127 miles south of Los Angeles, and it is 60-odd miles further into San Bernardino.

This fruit is brought in also, some of it, from Santa Barbara, on the Southern Pacific, and started from Colton, which is right near San Bernardino.

This work of assembling in this case is done for nothing.

Mr. Peabody has made an estimate that if we were to get the same relative charge for assembling this fruit that is allowed over there (indicating) we would still be behind these Florida people on the dollar and cents proposition; that our rate is less than theirs, with that addition, which, of course, we do not have.

1609 Turning now to Exhibit 3, which shows the New York City receipts of California lemons compared with foreign lemons, seasons ending October 31, 1909, 1910 and 1911. That shows, in columns which you will see, the number of boxes that came from abroad and the number of boxes that were landed in New York from California.

On the last line he shows the per cent of boxes to New York; that is to say, in 1911, the last year, over 5 per cent of the California product went into the port where the bulk of the foreign business comes.

What do you want to say about that, Mr. Peabody? There was a point about that that I do not recall.

Mr. Peabody: It simply is interesting to note that the proportion of the California product as compared with the product coming into New York, and also, relatively, into the country, from abroad, has been increasing right along year after year.

You will notice that the receipts in New York are practically the same for the three years; 1,647,000; 1,646,000, and 1,642,000; almost identical.

Mr. Norton: There is one point I wanted to call to the attention of the Commission there: That in 1910 the boxes of Cali-

1610 fornia lemons fell off considerably. That is the season I was speaking of a little while ago, which was a short crop.

Mr. Call: Where do you show that the per cent has increased in 1911 over two years ago? Where do you show that the percentage has increased?

Mr. Peabody: The per cent of 1911, over 1909, was 4.21; but the per cent of 1911 over 1910 was 153, because of the failure of the crop in 1909.

Commissioner Lane: Do you deem it essential that we should consider the importation of foreign lemons?

Mr. Norton: No. This was simply put in as a matter of information. It has no great probative value, except possibly as showing the value of this service which we are giving to these people, one of the tests of which, as I understand it, is that the business moves freely under it and gets to the spot; and that we are putting these lemons into the most distant point and the point of severest competition. So that it is material to show the value of this service to

the shipper, as the Commission itself stated in the original lemon case, we put in rates to handle the business in such a manner as to drive all foreign oranges off this continent. This is interesting as
1611 illustrating a similar growing situation with respect to lemons. It is important in that connection, as illustrating the value of our rate to the people who pay it.

Mr. Peabody: It was also intended to illustrate the proposition that the majority of the testimony which was submitted by the complainants at the hearing related to the business of 1910, where the lemon crop was very, very small, and where it was not a normal crop, as shown by the three years right here. Consequently, any calculation based upon the crop of 1910, is erroneous.

1612 Mr. Norton: Turn to Exhibit 4, Mr. Peabody, which deals with the distribution of Santa Fe citrus fruits.

First, I desire to ask you one more question about Exhibit No. 3. This exhibit, showing the foreign lemons in New York, has to do with all receipts there, for distribution from New York to other parts of the United States, has it not?

Mr. Peabody: Oh, yes.

Mr. Norton: And not simply for consumption in New York?

Mr. Peabody: No.

Mr. Norton: Exhibit No. 4 deals with the distribution of Santa Fe citrus fruits to $1.15 territory by transcontinental groups, seasons ending October 31, 1909, 1910 and 1911, for lemons, and season ending October 31, 1911, for oranges.

Mr. Peabody: The Commission are undoubtedly familiar with the transcontinental groups as arranged, "A" being the pier in New York, and then, from "B" to "J" inclusive, being the various groups of the transcontinental territory.

This Exhibit 4 shows the actual distribution by groups, and I have with me the distribution by every destination, if the Commission would care to see it. I have followed every car for the three years, 1909, 1910 and 1911, on lemons; and for the year 1911 on oranges, to destination, and obtained the exact number
1613 of cars, and, for that matter, the mileage. My mileage figures are made up by following each car to its destination.

Mr. Norton: The net result of that, down in the right-hand corner, is that the total average haul in 1911 of lemons was 2,283 miles, and of oranges was 2,585. Is that it?

Mr. Peabody: Yes. The actual difference is 302 miles.

As to the distribution part of it, east of Pittsburgh, 52.5 per cent of the oranges went east of Pittsburgh and 23.8 per cent of the lemons went east of Pittsburgh; 43.2 per cent of the lemons went east of Chicago.

Commissioner Prouty: You are talking, now, Mr. Peabody, about your lines?

Mr. Peabody: About what we handled.

Commissioner Prouty: You do not know anything about the other lines?

Mr. Peabody: And we handled 3,718 cars last year, of lemons.

Mr. Norton: Can you tell how many cars of lemons moved altogether on all lines?

Mr. Peabody: Yes, sir.

Mr. Norton: Do you remember, roughly, about what pro-
1614 portion of lemons we hauled?

Mr. Peabody: I think I have that somewhere here.

Mr. Norton: Never mind looking it up.

Commissioner Prouty: In making those figures, did you take into account all the lemons handled on your line, or only all the transcontinental lemons handled under the one dollar rate?

Mr. Peabody: The lemons handled coming east of Albuquerque. Those are the only lemons in issue in the case. I have included every car coming east of Albuquerque.

Commissioner Prouty: They might be the only ones in issue by your line, but of course the other lines would handle to Salt Lake City?

Mr. Peabody: Not on this tariff.

Commissioner Prouty: But they do on the dollar rate?

Mr. Peabody: That is true; but it is under another tariff, entirely.

Commissioner Prouty: What we want to know is what lemons are handled, what they pay, and to what points they are handled.

Mr. Norton: We want to know what lemons are handled under this tariff and under this rate.

1615 Commissioner Prouty: The Commission, in fixing the rate, wants to know what lemons are handled, what they pay, and to what points they are handled,—and not simply about some particular tariff.

Mr. Peabody: These figures include every car coming east of Albuquerque, called transcontinental shipments.

The Chairman: They all move at the dollar rate?

Mr. Peabody: I do not know about that.

Mr. Lamb: The Southeastern territory takes a higher rate, does it not?

Mr. Peabody: There are some points in the Southeastern territory that take a higher rate.

Mr. Lamb: That is, points east of Albuquerque you are talking about, including this Southeastern territory?

Mr. Peabody: Every lemon that we hauled east of Albuquerque.

Commissioner Lane: That is a difference of 344 miles, average, for the 1911 orange haul, and the 1910, 1909 and 1908 lemon haul.

Commissioner Prouty: There is nothing in that statement which shows that the conclusion of the plaintiff- is not right, and that the lemons which moved on the dollar rate to transcontinental territory may not move 450 miles further than the oranges
1616 moving under the $1.15 rate.

Mr. Norton: I have submitted that there is nothing to prove the correctness of the statements in the figures that have been submitted. We have traced each one of these shipments to its destination.

Commissioner Lane: Your figure averages 344 miles.

Mr. Norton: Yes.

Mr. Dillard: 302 miles, according to Mr. Peabody's statement.

Commissioner Lane: I mean for the three years.

Mr. Peabody: There are no figures showing the average haul on oranges for those corresponding years.

Commissioner Lane: You have not given us those.

Mr. Peabody: I did not have time to make them up. We were called upon to prepare this evidence in two weeks, about, from the time we got this notice, and I had to work pretty hard to get these figures.

Mr. Lamb: As I understand it, in your statement to get the average haul, you have included lemon shipments that go to Southeastern territory, while in Mr. Dezell's statement are included only lemon shipments that moved to points that take the dol-
1617 lar rate.

Mr. Norton: I have tried to make it clear. I may be dull. I probably am. I have been told that, at times. I have tried to make it clear that the dollar rate is not the question in controversy here, but it is the question of these tariffs.

It was stated in the former case by the Commission that whether the rate on lemons should be placed at a dollar under these tariffs, as against one dollar and fifteen cents on oranges, might be ascertained by the fact that these lemons in this controversy were hauled by us not to some Western points up in Canada, taking a dollar rate under another tariff; that the average haul of these lemons was about 500 miles less than the haul of oranges. Therefore, I take it, if we show that the lemons moving under these tariffs at this rate, or at any rate that the tariff contains, do not move 500 miles less, we have scored a point.

Commissioner Prouty: We have before us here both the Salt Lake rate and this rate. The Salt Lake case is set down for hearing at this same time, for the very purpose of enabling us to consider that rate in connection with all other transcontinental rates.

Mr. Norton: The rate to Salt Lake was made in another
1618 litigation one dollar, and, as Mr. Peabody has said, this matter was prepared before we knew the Salt Lake case was to be tried with this. I did not know until it was stated just now, that it was to be tried as a part of it. We got telegraphic notice to prepare for this case, No. 3000, and, second, we got telegraphic notice that the other case would be reopened; but I did not even understand from that that they were to be tried together as one case.

I have prepared, on the $1.15 rate on oranges, and the one dollar rate on lemons, which was the controversy in the other case, and under which tariff it was said that the lemons moved 500 miles less, on an average. We have taken that and prepared these data to show just how far they move, as handled by our company.

Commissioner Lane: Let me ask you this question, Mr. Norton: You make the one dollar and fifteen cent rate on oranges, yourself. That is not a rate imposed by us?

Mr. Norton: Yes.

Commissioner Lane: The average haul is 344 miles, on the figures you have furnished, less on lemons. Taking the rate that we have fixed, with which you have compared the California rate, namely, the rate from Florida to Chicago, and taking the
1619 rate per ton per mile on that from Florida to Chicago, as you have given it, it figures, for the 344 miles, about 23½ cents. That would be so much less, for the rate on lemons—23½ cents less than your rate on oranges.

Mr. Norton: If there is any virtue in the ton per mile calculation; and, secondly, if there is any virtue in the proposition that the lemon haul is on an average less than the orange haul. Of course, we do not admit that. We do not think it makes any difference, under a blanket rate; that the average length of the haul, where they are relatively alike, is inconsiderable.

Commissioner Lane: But we might not fix a blanket rate. If we are coming down to a proposition of fixing these rates, we may fix them upon some mileage basis. Perhaps we have not the power to fix blanket rates.

Mr. Norton: Then, of course, the mileage would have to be taken into account; but on a shipment of fruit from southern California to the Atlantic Coast, 3500 miles, or something like that, a difference of 300 to 400 miles, under a blanket system, is a negligible quantity.

We have put this in, not because we think it is anything more than negligible, but merely to show that, even if it were
1620 of some value, it is not so great a distance.

Commissioner Lane: If the 344 miles is negligible, is the 54 miles of gathering negligible also?

Mr. Norton: When it is a free haul, under a blanket rate, the 54 miles that we haul this in for nothing is very important; but when you take through distances in a blanket territory, it is quite another matter, and is negligible.

Commissioner Lane: It depends on which end of the line it is, whether it is out West or in the East?

Mr. Norton: Not at all. It depends on the circumstances I have stated, namely, that we haul a long distance, for nothing, with no charge at all; whereas, in the case of a blanket rate, we are making a charge. Of course, it might be contended that we have a blanket rate from point of origin there. If that is what you mean, then it would make some difference.

Mr. Dillard: I want to see if I understand your Honor. Do I understand your Honor to say that if the rate from California to New York, a distance of 3200 miles, was $1.15, and the haul for lemons was only 344 miles less, that that would make a difference of 23½ cents?

Commissioner Lane: No.

1621 Mr. Dillard: Because that could not possibly be.

Commissioner Lane: I was just figuring on your ton mile rate from Florida to Chicago, and seeing what the 344 miles difference would amount to.

Mr. Dillard: The ton mile rate from Florida to Chicago?

Commissioner Lane: Yes.

Mr. Dilard: I have not figured that up. I knew the other figures could not possibly be correct.

Mr. Norton: Coming now to Exhibit No. 5, Mr. Peabody, which is a comparison of average revenue per train mile between the average of all trains and an average train composed of citrus fruit based on figures for the year ending June 30, 1909:

As I understand this, you have the average number of cars of revenue freight per revenue train mile——

Commissioner Lane: Do you want to see these figures that I was referring to a moment ago, Mr. Dillard?

Mr. Dillard: I think they could not be right, on a percentage of the mileage. That is all I intended to say about them, Mr. Commissioner.

Commissioner Prouty: Your average haul on all your oranges was some 2200 miles, was it not?

Mr. Dillard: I do not remember.

1622 Commissioner Prouty: At a rate of $1.15, that would pay an average per ton per mile of about one cent. Fifteen cents for a distance of 300 miles would be just one cent per ton per mile, would it not?

Mr. Dillard: I cannot figure it, but I have no doubt your figures are correct.

Commissioner Prouty: So that it would be, if you added, at the same rate as you add 15 cents for 340 miles——

Mr. Dillard: But why do you apply a mileage scale in that part of the blanket territory, when it is not applied on the remainder of the blanketed territory?

Commissioner Prouty: I am merely inquiring what would be a fair rate for a haul of 350 miles less, if one dollar and fifteen cents is a fair rate for an average haul of 2300 miles.

Mr. Dillard: What did you make the difference? I could not follow the figures.

Commissioner Prouty: Approximately, it would be one cent a mile. So that, if we were to put the whole thing on a mileage basis, the lemon rate ought to be 15 cents less than the orange rate.

Mr. Peabody: Perhaps I may call the attention of the Commission to the fact that it is altogether unusual to increase or

1623 decrease an added length of haul on a pro rata basis.

Commissioner Prouty: We understand that, and we did not attempt to do anything of that kind. That was only one of the factors considered by the Commission. The Commission at that time had no exact figures on the point. The complainants claimed the haul was 500 miles less, but they did not show exactly what the figures were.

Mr. Norton: The theory of complainants, as I understand it, is that the $1.15 rate is not to the average distance of the orange haul as the dollar rate is to the average distance of the lemon haul. The rate should be fixed, perhaps, to the nearest point of the blanket territory, and the rate is carried on, thenceforward, by conditions arising from competition.

Commissioner Prouty: That depends upon the point of view. We are to consider whether a blanket rate would yield you a fair price for the average haul; a fair blanket rate. I do not think we can fix any other kind of a blanket rate than one which allows you a fair price for the average haul.

Mr. Norton: That was what I was stating to be the theory of the legal blanket rate. You take the western edge of the blanket as the place where we should get a dollar for lemons and one dollar and fifteen cents on oranges, and we carry beyond proba-
1624 bly for competitive reasons.

Now, Mr. Peabody, returning to Exhibit 5, this comparison of average revenue per train mile between the average of all trains and an average train composed of citrus fruit, based on figures for the year ending June 30, 1909——

Mr. Peabody: This exhibit was made up to answer the measure of a train of 30 cars of citrus fruit against the average of all trains handled by the Santa Fe road during the year 1909.

In making up that comparison, a train of 30 cars, fully loaded with citrus fruit, passing over our line, was selected as one factor, and it showed that the earnings on that train were four dollars and some cents per train mile; and it was measured against the average of all trains on the Santa Fe system, which was found by dividing the total train miles on the Santa Fe system by the total earnings.

The train miles were divided into the total earnings, to get the amount per train mile, and in those train miles was included every train moved on the road; and, as you well know, a thing is called a train which has nothing but an engine and a caboose; it is a train, and it goes into the train mileage as such; and it includes all the little local trains on all our branch lines.

Mr. Norton: What comparison have you made against that?

Mr. Peabody: I have made a comparison here. I have
1625 taken those same average trains, which show that there — carrying more or less load in every average train — hauled on the system, giving our earnings of $3.05; and — have compared against that 18 full loaded citrus cars com- from California which pay us on an average, earning of $ — a train mile, as against $3.05 for our average train mile which is composed of 18 partly loaded cars.

Commissioner Prouty: But the very reason why you should make a low charge for moving this traffic is because you move it under such circumstances that you always can move it in a solid train. That is one reason why you should apply a low rate.

Mr. Peabody: I believe we showed, in an exhibit, at that time, that we took two trains of solid fruit out of San Bernardino, and showed that they reached their destination on eight, nine or ten trains, and were split up at a number of terminal points.

Commissioner Prouty: That is because it was more convenient for you to do it in that way.

Mr. Peabody: We could not possibly haul a 54-car train to save our lives without getting bigger engines and everything.

Commissioner Prouty: You handle these oranges at all
1626 points in a train of the full size that can be handled at the greatest convenience by you?

Mr. Peabody: That is true.

1627 Mr. Norton: We recognize that in making the whole rate on this fruit.

Mr. Lamb: How does the average haul on citrus compare with the average haul that you make on other freight in this exhibit?

The Chairman: You mean the average number of cars in the train?

Mr. Lamb: No, I mean the average haul. He said assuming each car is loaded with citrus, and I am asking for the average haul of the citrus fruit.

Mr. Peabody: I was taking the actual miles of citrus and revising it on a train mile basis.

Mr. Lamb: What is the average haul that you used in getting at the train earnings on your average of all other freight?

Mr. Peabody: I could not answer that question.

Mr. Lamb: It would not be the same distance, would it?

Mr. Peabody: No.

Mr. Lamb: It would be much less, would it not?

Mr. Peabody: Very much less, the average of all trains, very much less than the haul on this traffic, naturally; but the earnings per train mile nevertheless are expressed in that single unit.

Commissioner Lane: What is the average freight revenue
1628 per revenue train mile on your equipment?

Mr. Peabody: $3.05 for the year.

Commissioner Prouty: $3.09.

Mr. Peabody: The Commissioner found it $3.09 in his computation, but our computation shows $3.05.

Commissioner Prouty: What was your average per car earning that year per mile?

Mr. Peabody: Loaded, per car per mile?

Commissioner Prouty: Yes?

Mr. Peabody: I haven't it here, but I will give it to you. That is simply a division of the loaded car miles into the earnings.

Mr. Norton: Turning now to the next exhibit——

Commissioner Lane (interrupting): May I ask Mr. Peabody, just for information, how does that revenue earning per car mile compare with the other earnings in that same territory? That is an extremely high earning, is it not, compared with many roads?

Mr. Peabody: You mean $3.05?

Commissioner Lane: Yes.

Mr. Peabody: I guess, perhaps, it is higher than the average,
but I do not think it is unusual, because we have so much
1629 branch line mileage on which revenue is light, that I imagine it is not very much higher than usual.

Commissioner Lane: Your cost in the Western Advanced rate case, as I remember it, on branch lines, was some three times as high as your cost on the main line?

Mr. Peabody: Oh, yes.

Mr. Norton: Turn to the next exhibit, Mr. Peabody, which is a blueprint marked Exhibit No. 6. This was designed to meet a suggestion that this traffic moves in regular volume, which can be pretty well understood as to the future, and prepared for with more or less accuracy, and with very little inconvenience. This shows the movement for four years by months, and it is designed, turning to the month of March, for instance, taking one of the heavy months, when the movement is large, to show, in the upper line, 1908.

Mr. Peabody: Yes sir. 4700 cars, in round numbers.

Mr. Norton: The number of cars moving, and the next shows 1909, the next 1910, and the next 1911. In 1911 the movement was very much larger than the preceding years. These other years were more or less regular. For the month of April, in the first year, the preparation which was made was in no wise a guide for the preparation needed for the next year; and for the next year that year's
1630 preparation was no guide, and for the next year that year's preparation was no guide. Is that the purport of this table?

Mr. Peabody: It shows the fluctuations in the movement of the citrus fruit, showing that the movement is not at all the same during the same months in the different years.

Mr. Norton: Do you know how many empty cars we have in California now?

Mr. Peabody: We have something over 1800 cars parked there now, waiting for movement.

Mr. Norton: They will be idle until when?

Mr. Peabody: Until required for the transportation movement.

Mr. Norton: When does this movement begin?

Mr. Peabody: The year commences with December 1st. The movement does not really commence until January 1st. The fruit year commenced November 1st, I should say, instead of December first, but the movement does not really commence until January, with any great degree of regularity, although last year the movement in the month of December was heavy, about three thousand cars going out during the month of December. The blueprint shows about how the movement has been going. It has been our
1631 practice and we have been doing it year by year, to park a great number of cars during the latter part of the season or else haul on passenger trains and in a hurry everything we can get out there to meet the demand.

Mr. Norton: That was pretty well covered in detail on the previous case, and we will pass it now.

Turning now to Exhibit No. 7, this is a comparison of refrigeration and diversions on oranges and lemons to the $1.15 territory for the season ending October 31, 1911. As I understand, that shows the number of diversions per car on oranges was $1.32. That is the question Commissioner Lane put this morning. The number of diversions on lemons was 1.46 per car.

Mr. Peabody: That is the number of diversions per car diverted. For every car diverted, it was diverted an average of 1.32 on oranges, and 1.46 on lemons, showing the diversions were more frequent. A

comparison of the total cars moved is shown on the bottom line, showing 55 per cent. of oranges and 57 per cent. of lemons.

Mr. Norton: Both of those comparisons show the lemon is diverted more than the orange?

Mr. Peabody: Out of 3718 cars handled by our lines, 3718 cars of lemons, 2146 diversions were made.

1632 Commissioner Prouty: What do you mean by "diversions"?

Mr. Peabody: A change in the routing of the car.

Commissioner Prouty: Is that a diversion made before or after the car reaches the point to which it was originally billed?

Mr. Peabody: Either and both.

Commissioner Prouty: Can you tell in how many instances these diversions were made before the car reached its original billing point, and in how many instances they were made afterwards?

Mr. Peabody: I cannot.

Commissioner Prouty: Where the diversion is made before the car reaches the original destination, there is no delay in the transit of the car, is there?

Mr. Peabody: Yes and no. A car coming to Chicago finds, when it gets to Chicago, an order for diversion to go on to New York or some other point. That car is taken out of the train and put into our forwarding yards. Had we known it was to be diverted or if it had been billed to New York direct, it would never have gone into the Chicago yards at all.

1633 Commissioner Prouty: I am talking about the cases where you do know before the car gets to Chicago that the car is going on to New York.

Mr. Peabody: We do know in that case. We do not know just where that car is, however, or when it is coming in, and we may not have time to find that car en route, because it is much more difficult to locate a car en route on a diversion order.

Commissioner Prouty: It sometimes happens the diversion order is given after the car arrives?

Mr. Peabody: Very often.

Commissioner Prouty: You cannot tell how many times the car is actually diverted after it has arrived, and how many times the diversion order has been given in that way?

Mr. Peabody: I cannot.

Commissioner Prouty: For how long a time did you keep a car? How much free time do you allow on a car at Chicago?

Mr. Peabody: Forty-eight hours.

Commissioner Prouty: And can it have 48 hours at every diversion point?

Mr. Peabody: It can, and frequently does.

Mr. Norton: And if it requires refrigeration, we have to refrigerate it and take care of it.

1634 Mr. Peabody: We have to take care of it and put ice in it. Of course there is an extra charge for that.

Mr. Norton: Mr. Commissioner, the question you asked about how many diversions were made before destination and how many afterwards, was fully covered in the previous hearing before

the Commission. We put that all in as to both oranges and lemons, and also there was evidence as to back haul. We showed they have forty-eight hours marketing or shopping time in each point, and the carloads diverted down into this Southern country (indicating on map), are sometimes backhauled free of charge, and then go on. Cars coming from California are sent up to Denver, and back hauled. There are many other instances where there is considerable back haul under this diversion privilege. We do not need go over all that matter of diversion, because it has been covered before.

Now, Mr. Peabody, referring again to those exhibits, table No. 7 is presented in answer to a contention that the rate on lemons should be lower than the rate on oranges, because oranges are undergoing diversions all the time, whereas lemons are not. We show here the lemons are receiving this special service more frequently.

Mr. Call: I do not know who ever made that claim.

Mr. Norton: I think it is in the brief for complainants on
1635 the argument.

Commissioner Prouty: Anything in the record before you need not go into a second time.

Mr. Norton: That is the reason I have not done it.

Mr. Peabody: Was it not stated before on the stand that oranges were diverted oftener than lemons?

Mr. Call: Not that I know of.

Mr. Peabody: And only a very small portion of lemons diverted?

Mr. Call: Not that I know of.

Mr. Norton: We may be in error about that. If so, the exhibit may go.

Exhibit No. 8 is simply a further elaboration of the wheel report which we put in before, Mr. Commissioner Prouty, and the last three columns show what it contains, namely, that citrus trains of fruit moving out of California, as shown in the middle column, are handled at a better rate of speed than other eastbound trains, and much better still than westbound trains.

Commissioner Prouty: It was stated here this morning, Mr. Norton, that you had a faster schedule for trains carrying deciduous fruit than for trains carrying citrus fruits. Is that due to
1636 some fast schedule which you apply to these trains, or to the fact that they are more promptly handled?

Mr. Norton: That was news to me. I never looked that up.

Commissioner Prouty: Do you know, Mr. Peabody?

Mr. Peabody: There is no faster schedule, and I doubt very much if there is any faster service. One of the tables in the exhibit will show an examination of our records for two weeks, in which the time is given which corresponds with the deciduous time, which was testified to this morning. I do not think it received any different attenton, either the lemons or the oranges.

Mr. Norton: It was news to me, Mr. Commissioner.

Commissioner Lane: Do you handle much deciduous fruit?

Mr. Peabody: We handle a good deal. I can tell the number of cars handled, if you would like to know.

Mr. Norton: Will your table show those out of California?

Mr. Peabody: We handled, of transcontinental deciduous fruit last year 2307 cars.

Mr. Norton: Passing from Exhibit 8, which deals with the rapid service of this business, we will take the next table, which I will file as Exhibit No. 9, analysis of time in transit of citrus as
1637 compared with nonperishable freight eastbound out of California to destinations Missouri River and East, September 1 to 14, inclusive, based on actual time of departure from San Bernardino and Fresno, and of arrival at eastern terminals, as per conductor's wheel reports, and so forth. This shows at the bottom, as I understand it, that on citrus fruit the distance 994 miles was made in six days and nine hours, and on dried fruits, canned goods and so forth, 2124 miles in nine days and sixteen hours.

Mr. Peabody: That was the record of all the cars of citrus fruit and dried fruit and canned goods and California products coming out of California during that time from September 1st to 14th. I simply took the data that was at hand at that time, at the time we made this up.

Mr. Norton: It is supplemental to a preceding sheet showing rapid service?

Mr. Peabody: Yes.

Mr. Norton: Turning to the next statement, which I will mark Exhibit No. 10, showing percentage of paying load on lemons compared to the average of all freight,—that shows on lemons 40 per cent of the load pays, while on all freight 50.8 per cent pays. When the lemons are under ice, only 35 per cent of the load
1638 pays.

Mr. Peabody: There is a correction which should be made in the bottom figure of that sheet. The last figure on the sheet should be 5517 instead of 1552. It is a typographical error.

Commissioner Prouty: Does all freight include your less than carload freight, or only your carload?

Mr. Peabody: This is the average of all loaded cars—cars containing a load, and not including, of course, empties.

Mr. Norton: Turn now to the next statement, which I will mark Exhibit 11, showing the cost of freight operations per revenue ton mile for the fiscal years 1902 to 1911, inclusive. That is just a matter of general information, showing in the last column the condition from year to year of our operating expenses. That is to say, our operating expenses have been generally going up.

Mr. Peabody: It shows an increase from 5.23 mills per revenue ton mile in 1902 to 6.58 mills in 1911 on the entire line.

Mr. Norton: Passing from that statement to the statement which I will mark Exhibit No. 12, this deals with the average cost of handling a car of lemons from Santa Ana, California, to McCook, Illinois—that is, Chicago?

1639 Mr. Peabody: That is practically Chicago. That is where we deliver to connecting eastern lines, and this is with reference to cars going east.

Mr. Norton: This statement shows the Santa Fe revenue when destined to Buffalo and when destined to New York, based on figures

and averages given in exhibits filed in the other hearings, for the year ending June 30, 1909. This shows what, Mr. Peabody?

Mr. Peabody: This shows that on the assumption that it costs as much to handle—I use the word "assumption" in the sense that it is probably correct, or we believe it to be correct—that it costs as much or more than the average cost to handle this business. On that basis, it shows our operating cost, including interest and taxes, on a car of lemons, when destined to Buffalo, is 41.81 more than we get for hauling that car to McCook, where we deliver to connecting lines. If the car is going to New York, our expenses are 68.89 more than we get on that car going to McCook. That is the expense, the proportion of taxes and interest properly chargeable to the car, and so forth.

Mr. Norton: You say on the assumption that the cost of handling this business is under the average cost. Are you able to
1640 state from your experience as a railroad man—you have been a traffic man as I understand?

Mr. Peabody: Yes sir.

Mr. Norton: From your experience also as a statistician, are you able to state whether the cost of handling this business is equal to the average cost of handling all freight?

Mr. Peabody: My opinion is that it is fully equal to the average cost of handling all freight. In support of that opinion I would say that it is easily apparent that it costs more to handle this carload citrus fruit business than it does any other carload freight, and our carload freight comprises 93 per cent of our total, so there is only an application of the higher cost business than can be made only to the extent of 7 per cent of the business, because 93 per cent of our business is carload freight.

Mr. Norton: That is all I care to ask on these exhibits, unless you think of something I have omitted to call your attention to. I think I asked you to look up some other matters to present. Have you anything else to add? If not, we may think of something further in the morning.

Mr. Peabody: I do not think of anything at this time.

1641 Commissioner Lane: I do not understand that line "Santa Fe proportion when destined to Buffalo, $229." You have explained that, but I do not quite catch it.

Mr. Peabody: We have to allow the eastern lines, east of McCook, on Buffalo business, 15 per cent. Consequently, we have to pay 15 per cent to them.

Commissioner Lane: That is figured on the $1 rate?

Mr. Peabody: Yes. We get 85 cents for hauling it up to McCook. On the New York rate we are obliged to allow 25 per cent, and consequently we get 75 cents up to McCook. The revenue was figured on that basis. The expense is figured on the basis of our freight operation, not on the average of the entire line, but the average of the particular portion of the line over which this car travels. We do not take the average for the entire system, but we take the cost by the divisions over the particular portion of the line over which these cars travel, and the figures are made up on that basis. Then

the interest and taxes are divided on a car mile basis. We take our total car mileage and divide it into our total interest and taxes—that is, after setting aside the proper division between freight and passenger—and divide the freight proportion into freight
1642 car miles, and that gives us so much a car mile, and that multiplied by the car miles traveled in this particular instance, added to the operating cost, gives us the total cost represented there.

Commissioner Lane: That is to say, $271.14? Is that your total cost?

Mr. Peabody: Yes.

Commissioner Lane: And inasmuch as you only get $229.33——

Mr. Peabody (interrupting): —it makes a deficit of 41.81 on the Buffalo car, and in the case of the New York car we only get 227.33, which of course makes a deficit of 68.89.

Commissioner Lane: Then the more of this business that goes east of Chicago, the worse off you are?

Mr. Peabody: Yes sir, and we do not want it, but we have to take it.

Commissioner Prouty: Why do you have to take it?

Mr. Norton: I imagine if we declined to handle, after the rate had been named for us by this authority here, anything to New York——

Commissioner Prouty (interposing): But we have not named any rate. You named that rate of $1, and you maintained it for some six or eight months, and you did it, as you have testified
1643 before me, because you wanted the New York business and could not get the New York business unless you did make a rate of $1. What did you mean by saying you did not want this business?

Mr. Peabody: We did it, Mr. Commissioner, because we wanted to revive that industry and put it on its feet, and we did it in spite of the loss which we stated was the case, that we knew at the time or believed at the time, and Mr. Ripley wrote to the officials at the time that he believed there was no money in it, but we would take it in order to see if we could get that industry upon its feet upon the complaint of the growers of California. That was the only reason that $1 rate was made.

Commissioner Prouty: This computation of yours is made on the sole basis of that computation in the Cattle Raisers' case?

Mr. Peabody: Exactly.

Commissioner Prouty: And in other cases?

Mr. Peabody: Yes sir.

Commissioner Lane: Do you get the same proportion on oranges out of the $1.15?

Mr. Peabody: Oh, yes, we get the same proportion, 25 per cent on New York and 15 per cent on Buffalo. That is the regularly established transcontinental division.

1644 Commissioner Lane: 25 per cent off of $1.15?

Mr. Peabody: Yes sir. 29 cents. That allows the line east 29 cents.

Commissioner Lane: That is, 29 cents off of $1.15 cents?

Mr. Peabody: Yes sir. 29 cents off of $1.15 on the New York business will just about pay us out. I have not figured it to see.

Commissioner Lane: Is it 91 cents?

Mr. Peabody: No; if it was 91 cents it would not pay us out.

Mr. Lamb: It is 86 cents.

Mr. Peabody: Then it would not pay us out.

Commissioner Lane: You are not making any money on that?

Mr. Peabody: Not on New York at $1.15.

Commissioner Lane: Where do you think the line is drawn at a reasonable rate—how far west?

Mr. Peabody: Where $1.15 constitutes a reasonable rate?

Commissioner Lane: Yes.

Mr. Peabody: I should like to make some figures before attempting to answer that.

Commissioner Lane: Those figures are on the dollar basis.

1645 Is the 2.71 at Chicago reasonable compensation for you?

Mr. Peabody: That would be $1 to Chicago?

Commissioner Lane: Yes. Is that reasonable compensation for you there?

Mr. Peabody: I should like to make some figures before attempting to answer that.

Mr. Norton: That is the total cost?

Commissioner Lane: Yes, I know, but everything is included in it, taxes, interest, and so forth.

Mr. Peabody: No dividends are in it.

Commissioner Lane: Just interest on the bonds?

Mr. Peabody: Just interest on the bonds, yes.

Commissioner Lane: So you have to go much further west than Chicago before you make any reasonable rate?

Mr. Peabody: I would imagine so. I have not made any figures, but I imagine we would have to go quite a ways west of Chicago. In other words, if citrus fruit paid its proper proportion, in view of all the conditions attaching to it, the rate would of necessity be much higher than it is.

Commissioner Lane: It will not do your road any harm if the Panama Canal carries all of these citrus fruits to the Atlantic territory, will it?

1646 Mr. Peabody: I am not at all afraid the Panama Canal will carry much citrus fruit to this territory. It *goes* not grow on the seaboard, and it is not consumed on the seaboard.

Mr. Call: Do you think we cannot get it down there?

Mr. Peabody: Yes, you can, but it will cost something to do that. I am not at all alarmed at present, but that is my personal opinion, that is not a business opinion of the railroa- company.

Commissioner Lane: You think the road would be very much better off if all the citrus fruit from Southern California were carried, at least east of Chicago—or the lemons east of Chicago, and the oranges somewhere around Cincinnati—by water around to New York?

Mr. Peabody: No sir, I do not think that.

Mr. Norton: These figures do not show that.

Commissioner Lane: His figures show that, it seems to me.

Mr. Peabody: You are well aware of the proposition that anything over movement expense helps to pay other expenses, and it is only on that theory we can afford to carry this at all. That is the theory we can consider, but in prescribing a reasonable rate, that is theory that cannot be taken into account.

1647 Mr. Norton: Those figures show that owing to the rate on lemons here, some other commodity is bearing a part of the burden they ought to bear?

Mr. Peabody: It must, of necessity.

Mr. Lamb: Would you mind suggesting which one of your commodities that is.

Mr. Peabody: No, I am not hunting things on which to reduce rates?

Mr. Norton: That is all.

Cross-examination:

Mr. Call: Mr. Peabody, you have an agreed division in your assembling rate, have you not, between the various roads?

Mr. Peabody: We have no assembling rate whatever.

Mr. Call: I know, but per car; the Santa Fe delivers, for instance, a car on your line, delivered to the Salt Lake at their assembling point, Colton, or to the Southern Pacific at their assembling point, Colton, and you have an agreed division, have you not?

Mr. Peabody: I do not know.

Mr. Call: You do not know what that division is?

Mr. Peabody: No.

1648 Mr. Call: What would be a fair cost of assembling these citrus cars?

Mr. Peabody: We think the table prescribed by the Commission in the Florida case would be a reasonable rate.

Mr. Call: What would that rate be?

Mr. Peabody: On an average of 54 miles, it would be ten cents.

Mr. Call: You think that would be a fair cost or a fair rate?

Mr. Peabody: From San Diego it would be somewhere around 15 cents, if I remember the table correctly.

Mr. Call: You think the average cost would be ten cents from all points, or is that what you regard as including a profit?

Mr. Peabody: I have not made up any figures as to the average cost of that little short service. It is something that would cost more than that.

Mr. Call: In proportion to the rate as a whole, you would say ten cents is a proper assembling charge?

Mr. Peabody: I should think it would be a fairly remunerative rate.

1649 Mr. Call: In your figures here, and the basis of all your figures which you have submitted to the Commission now and before, the accuracy rests upon your opinion that the transportation of citrus fruits per gross ton mile is equal to or above the average of all freights?

Mr. Peabody: The accuracy of my figures does not depend on anything of that sort at all. The reason for the use of the figures is that assumption, but the figures are accurate.

Mr. Call: They are all based on that assumption, are they not?

Mr. Peabody: The use of them?

Mr. Call: All of your computations are based upon the assumption that the cost per gross ton mile of transporting citrus fruit is equal to all other costs.

Mr. Peabody: The computation in showing what is the cost of doing business is based on that assumption.

Mr. Call: That is what I am asking you.

Mr. Peabody: Yes.

Mr. Norton: But the cost figures in your tabulations are drawn from vouchers which paid the money?

Mr. Peabody: They are, and they are absolutely accurate.

Mr. Call: So far as your receipts are concerned, but when you are taking your actual expenses, do you mean your actual expenses are drawn from vouchers on citrus fruits, or all your expenses?

1650 Mr. Peabody: Everything that is paid for, every voucher that we pay is apportioned.

Mr. Call: I am not talking about how you got at your computation as to all your cost. I am assuming you would not misstate that to this Commission. I want you to say yes or no, whether the assumption that citrus fruits cost as much or more than all other freight per gross ton mile is the basis of your computation?

Mr. Peabody: As to the cost of the car, it is; it is, yes sir.

Mr. Call: What is your average transportation?

Mr. Peabody: Do you mean average length of haul?

Mr. Call: The average haul of all fruits on his line.

Mr. Norton: I want to hear the answer to that other question read.

Commissioner Prouty: The answer to what question, Mr. Norton?

Mr. Norton: The answer to the last question. I did not catch it clearly.

Commissioner Prouty: Read the last question and answer, Mr. Stenographer.

The Stenographer (reading): "I want you to say yes or

1651 no whether the assumption that citrus fruits cost as much or more than any other freight per gross ton mile is the basis of your computation.

"Mr. Peabody: As to the cost of the car, it is; it is, yes sir."

Mr. Norton: The question is not clear.

Commissioner Prouty: I think he understands it. You must understand gentlemen, this question has been before the Commission two or three times already. Mr. Peabody has explained these matters to us, and we have discussed them and ruled upon them. It is hardly worth while to take up a great deal of time here with this matter.

Mr. Call: Very well; I think that is right.

Mr. Norton: What I had in mind was Mr. Call was stating a proposition that all the computations had been based on that assumption.

Commissioner Prouty: No; his last computation.

Mr. Call: His cost computation.

If, Mr. Peabody, your average haul on citrus fruits is something over two thousand miles, and your average haul on all freight is 370 miles—did you say that?

1652 Mr. Peabody: No, I did not say it.

Mr. Call: I think it is about that.

Commissioner Prouty: It is close to 365.

Mr. Peabody: For last year it was 347. That is all freight. For all carload freight it was 368.

1653 Mr. Call: Your average haul on all freight is 347 miles, and the average haul on citrus fruit is something over 2,000 miles——

Mr. Peabody (interposing): No sir, it was 1,957 miles.

Mr. Call: What is your haul?

Mr. Peabody: That is our haul.

Mr. Call: You have in there what would be, assuming the cost would be the same, equivalent to something over five transportations, which you say would be at the same cost. You say the freight is gathered up——

Mr. Peabody (interposing): About five, yes.

Mr. Call: The fruit is gathered up, the car furnished, and spotted, and transported, and then spotted for delivery, and altogether there are five different transportations which do not cost any more than for one haul through. That is your proposition, is it not?

Mr. Peabody: No, sir, that is only the way I stated it. I am perfectly willing to go into it if the Commission wants to hear it, but we have gone over that thing a great many times.

Commissioner Prouty: Yes, I think you will find in these other cases that question was gone into.

Mr. Peabody: It would take two hours to explain it.

1654 Mr. Call: I think it would take longer than that—it would for me.

Mr. Peabody: Well, I do not know about that. I might be willing to admit it however.

Mr. Call: With regard to this fast train, did you know about that fast train from Fresno for deciduous fruits on your line that had been put in?

Mr. Peabody: No, sir, not particularly or at all.

Mr. Call: Did you know about the Western Pacific train of five and one-half days?

Mr. Peabody: I did not.

Mr. Call: Which you and the Southern Pacific were making?

Mr. Peabody: I never heard of it. Perhaps that accounts for the enormous deficit they are making this year, if they have been doing much of that business.

Commissioner Lane: They explain part of that on the ground of divisions they make with other roads.

Mr. Peabody: That may be part of it, but it is their own line all the way through. I do not know why they cannot divide as they choose.

Mr. Call: If your citrus fruit business is a loss to you, on that basis you have figured, the deciduous shows a still greater
1655 loss, does it not?

Mr. Peabody: If it pays less money, yes.

Mr. Call: It does, does it not?

Mr. Peabody: Please distinguish between the word "deficit" and the word "loss." I have never claimed we have lost money by hauling citrus fruit. I have claimed citrus fruit does not pay its proper proportion of the cost.

Mr. Call: We will use whatever word you want to use. What do you want to call it—deficit?

Mr. Peabody: Yes, deficit.

Mr. Call: We will call it deficit. If your citrus fruit shows a deficit to the seaboard, then your deciduous fruit shows a still greater deficit, does it not?

Mr. Peabody: If it pays less money, yes.

Mr. Call: You know what it pays, do you not?

Mr. Peabody: I do not.

Mr. Call: You do not know what it pays?

Mr. Peabody: I do not know what the rates are at all.

Mr. Call: You do not know what the minimums are?

Mr. Peabody: No, sir, except I have heard them testified to this morning.

Mr. Call: On your theory, the car carrying a low mini-
1656 mum would create a still larger deficit in your case?

Mr. Peabody: If they carry a smaller——

Mr. Call (interposing): A minimum load is a great factor in your way of computation, is it not?

Mr. Peabody: The smaller the load the proportion to the dead weight of the car, the less profitable it is to the company.

Mr. Call: What do you think about the cost to the road or the profit to the road if, instead of taking 26,000 pounds minimum on lemons, you should take a 34,000 pound minimum, showing 8,000 pounds more? What would be the material reduction of the rate in that event?

Mr. Peabody: I have never heard of any theories forbidding the shippers loading 34,000 pounds if they will. The existence of that minimum does not prevent them loading up to 34,000 pounds. The minimum is the amount below which they cannot load.

Commissioner Prouty: The greater the load, the greater the revenue. Mr. Call's question is, I suppose, even if the minimum were fixed at 34,000 pounds, would that justify a lower rate, and if so, how much?

Mr. Peabody: I think it would warrant a lower rate; that is, I think it would certainly be of less cost.

1657 Commissioner Prouty: Without making any admission, suppose for the sake of illustration that one dollar is a rea-

sonable rate, with the present minimum of 26,200 pounds, what would be a reasonable rate with a minimum of 34,000 pounds?

Mr. Peabody: I could not answer that offhand, but I am willing to say it should be less.

Commissioner Prouty: Could you make any figures on that and bring them here tomorrow morning, giving your reasons for it?

Mr. Peabody: I would not like to as soon as that. I will take a few days to consider it and be very glad to send them to you. That is a good deal of a proposition to answer.

Mr. Dillard: Would not the rule be this way, anyhow, that while abstractly that might ordinarily justify a lower rate, yet if the loadings are approximately 34,000 pounds now, we still get the revenue.

Commissioner Prouty: But they do not approximate 34,000 pounds. The testimony is they frequently secure only 28,000 pounds.

Mr. Peabody: That is what they load.

Mr. Call: Your figures are based on minimum?

Mr. Peabody: No, sir, on the actual loading.

1658 Commissioner Prouty: The revenues are based on the minimum, are they not?

Mr. Peabody: On the average load, the actual average load.

Mr. Lamb: Your rate is based on that minimum, and is made with reference to that minimum?

Mr. Peabody: The rate is one dollar per hundred pounds.

Commissioner Prouty: We are talking about your figures. You say those are based on the actual loading?

Mr. Peabody: Yes, sir, the actual loading of 14 tons and a fraction, or whatever I was figuring on.

Mr. Call: You are carrying approximately 28,000 pounds, you say, and if that were increased to 34,000 pounds, it would be an increase of about 21 per cent. of the load. That means you could haul in four cars instead of hauling in five cars. How much less can you afford to do it for in four cars instead of five cars?

Mr. Peabody: That is a question that cannot be answered offhand by anybody, least of all by myself.

Mr. Call: It would make a material difference, would it not?

Mr. Peabody: I should imagine.

Mr. Norton: If you do load up to the limit, we might

1659 have something to test on. If you had loaded up to the limit, we would have had some tests here on that. We have had no opportunity to try it out.

Mr. Call: I think we would have done it if you had put your minimums there, but our people do not usually load any heavier than they have to.

Mr. Norton: That is what we have noticed.

Commissioner Prouty: Is there anything further of this witness, Mr. Call?

Mr. Call: No, sir.

Commissioner Prouty: You may be excused, Mr. Peabody.

(Witness excused.)

A., T. & S.

Comparative Rates and Revenue per Ton-Mile on California and Florida Le
Tariff Rate from California Plus an Assembling Charge of 10c. *per* 100
Florida Rate is Based on the Order of the Interstate Commerce Comm
Basing Point—Jacksonville.

To—	From—	Mileage average. From basing point.	Origin to basing point.
Chicago	Florida	1,081	253
	California	2,161	54
Indianapolis	Florida	913	253
	California	2,242	54
Cleveland	Florida	1,069	253
	California	2,609	54
Milwaukee	Florida	1,163	253
	California	2,259	54
St. Louis	Florida	960	253
	California	2,024	54
Columbus	Florida	1,094	253
	California	2,454	54
Indianapolis	Florida	1,501	253
	California	2,242	54
Kansas City	Florida	1,152	253
	California	1,708	54
Omaha	Florida	1,374	253
	California	1,850	54
Cedar Rapids	Florida	1,281	253
	California	2,047	54

EXHIBIT No. 2.

S. F. Ry. System.

Lemons, from Average Points of Origin to Certain Destinations on Basis of Present 100 lbs. for the 54 Miles Average Haul into the Assembling Point, San B'd'no. The mmission Effective April 15, 1910, Using Average Origin (253) Miles from the

Total.	Rate from basing point		Assembling rate.		Total rate per 100 lbs.	Rate per ton-mile, cents.
	Per box.	Per 100 lbs.	Per box.	Per 100 lbs.		
1,334	$.53	$.662	$.20	$.25	$.912	1.367
2,215	....	1.15	....	.125	1.275	1.151
1,166	.50	.625	.20	.25	.875	1.501
2,296	....	1.15	....	.125	1.275	1.111
1,322	.53	.662	.20	.25	.912	1.380
2,663	....	1.15	....	.125	1.275	.957
1,416	.55	.685	.20	.25	.935	1.321
2,313	....	1.15	....	.125	1.275	1.102
1,213	.50	.625	.20	.25	.875	1.443
2,078	....	1.15	....	.125	1.275	1.227
1,347	.50	.625	.20	.25	.875	1.299
2,508	....	1.15	....	.125	1.275	1.017
1,754	.66	.825	.20	.25	1.075	1.226
2,296	....	1.15	....	.125	1.275	1.111
1,405	.62	.775	.20	.25	1.025	1.459
1,762	....	1.15	....	.125	1.275	1.447
1,627	.66	.825	.20	.25	1.075	1.321
1,904	....	1.15	....	.125	1.275	1.339
1,534	.62	.775	.20	.25	1.025	1.336
2,101	....	1.15	....	.125	1.275	1.214

(The exhibits used and referred to by Mr. Norton in the course of the direct examination of Mr. Peabody, and therein introduced in evidence, are in words and figures following, to wit:)

1660 EXHIBIT No. 1.

A., T. & S. F. Ry.

Average Haul on Citrus Into San Bernardino, Season Ending October 31, 1911.

	Cars.	Car-miles.	Avg. haul into San Bdno.
Lemons	3,718	202,141	54
Oranges & Grape Fruit.....	17,352	466,238	27

The above statement excludes 563 cars of mixed Oranges and Lemons.

Statistical Department, Chicago, November 10, 1911.

(Here follows Exhibit No. 2, side pages 1661-1666.)

1667-1668 EXHIBIT No. 3.

A., T. & S. F. Ry. System.

New York City Receipts of California Lemons Compared with Foreign Lemons, Seasons Ending Oct. 31, 1909, 1910, *and* 1911.

California Lemons.

	1909. Boxes.	1910. Boxes.	1911. Boxes.	Per cent increase 1911 over 1909.	Per cent increase 1911 over 1910.
Nov.	17,971	7,421	11,343		
Dec.	13,756	12,898	13,807		
Jan.	8,974	8,951	11,594	*	
Feb.	13,315	4,544	14,353		
Mar.	19,613	1,415	13,531		
Apr.	9,253	996	9,619		
May	11,925	121	11,773		
June	8,584	34	6,518		
July	4,461	2,599	5,890		
Aug.	2,535	1,575	5,312		
Sept.	24	1,801	4,332		
Oct.	660	3,216	7,668		
Total	111,071	45,572	115,740	4.20	153.97

Foreign Lemons at New York.

	Boxes.	Boxes.	Boxes.		
Total for year	1,647,625	1,646,750	1,642,900	.28*	.08*

Total Calif. Products Eastbound.

Cars	5,794	4,759	6,752		
Boxes (330 to car)	1,912,020	1,570,470	2,228,160	16.53	41.88
Per cent of boxes to New York	5.81	2.90	5.19	...	...

Statistical Department, Chicago, Nov. 11, 1911.

* Indicated in red ink.

Exhibit No. 4.

A., T. & S. F. Ry. System.

Distribution of Santa Fe Citrus Fruit Shipments to $1.15 *Territory by Transcontinental Groups. Seasons Ending Oct.* 31, 1909, 1910, *and* 1911, *for Lemons; Season Ending October* 31, 1911, *for Oranges.*

Group.	No. of cars. Lemons. 1909.	1910.	1911.	Oranges. 1911.	Average haul east of San B'd'no. Lemons. 1909.	1910.	1911.	Oranges. 1911.
B.	245	72	229	2,208	3,156	3,152	3,157	3,159
C.	1,212	774	1,264	9,054	2,660	2,568	2,644	2,806
D.	713	585	653	2,115	2,167	2,163	2,168	2,189
E.	387	382	333	1,178	2,001	1,991	1,999	2,014
F.	517	522	595	1,561	1,997	2,018	1,969	1,990
G.	234	214	199	523	1,573	1,583	1,703	1,637
H.	90	118	93	126	1,570	1,567	1,588	1,587
I.	129	205	243	322	1,497	1,485	1,488	1,524
J.	134	167	109	265	1,316	1,318	1,311	1,315
Grand Total	3,661	3,039	3,718	17,352	2,247	2,087	2,229	2,558
Add Average haul from origin into San B'd'no as per Ex.					54	54	54	27
Total average haul					2,301	2,141	2,283	2,585
					2,141			2,241
					2,283			
					3)6725			344
					2240			

The above statement excludes 563 cars of mixed oranges & lemons.

Statistical Department, Chicago, Nov. 10, 1911.

1671-1672 EXHIBIT No. 5.

A., T. & S. F. Ry. System.

Comparison of Average Revenues per Train Mile between the Average of All Trains and an Average Train Composed of Citrus Fruit. Based on Figures for the Year Ending June 30, 1909.

Revenue loaded car miles (J. P. Statement 8 Exh. 50, in case 3000)	377,921,099
Revenue train miles (freight and mixed) annual report	21,050,737
Freight Revenue " "	$64,212,638
Average cars revenue freight per revenue train mile	18
Average freight revenue per revenue train mile	$3.05

Assuming each revenue loaded car loaded with Citrus for the average haul of Citrus.

	Oranges.	Lemons.	Total citrus.
Average haul	1 999	1 909	1 983
Average earnings per car	$255.78	$226.65	$250.40
Earnings per train for average haul and for 18 cars	$4,604.04	$4,079.70	$4,507.20
Earnings per train mile	$2.30	$2.14	$2.27

A comparison of revenue per train mile such as shown on page 151 of Commission's Decision in case 3000 should be made between like trains, and not between a citrus train and an average train, as the average train is much lighter and is run at much less expense per train mile than the citrus train. The comparison is equalized in the above statement. The Commission in their comparison made no allowance for company material which is mostly hauled on revenue trains.

Statistical Department, Chicago, No. 10, 1911.

1673 EXHIBIT No. 6.

Blue Print showing eastbound Citrus Fruit out of California on all lines for seasons ending October 31, 1908-1909-1910-1911.

Analysis of Defendant's Exhibit No. 56 in I. C. C. Case No. 3000, S
Trains on Main Line Be

W

Between—		Miles.	Train miles.
San Bdno.	Barstow	81	2,025
Barstow	Needles	169	7,605
Needles	Seligman	149	7,301
Seligman	Winslow	143	7,293
Winslow	Gallup	128	4,224
Gallup	Belen	143	4,290
Belen	Vaughn	109	3,379
Vaughn	Clovis	131	4,585
Clovis	Amarillo	103	3,605
Amarillo	Canadian	98	3,724
Canadian	Waynoka	108	3,240
Waynoka	Wellington	107	5,029
Wellington	Emporia	127	4,064
Emporia	Argentine	108	6,372
Argentine	Marceline	108	5,940
Marceline	Shopton	113	6,441
Shopton	Chillicothe	105	7,350
Chillicothe	Chicago	129	6,579
Total			93,046

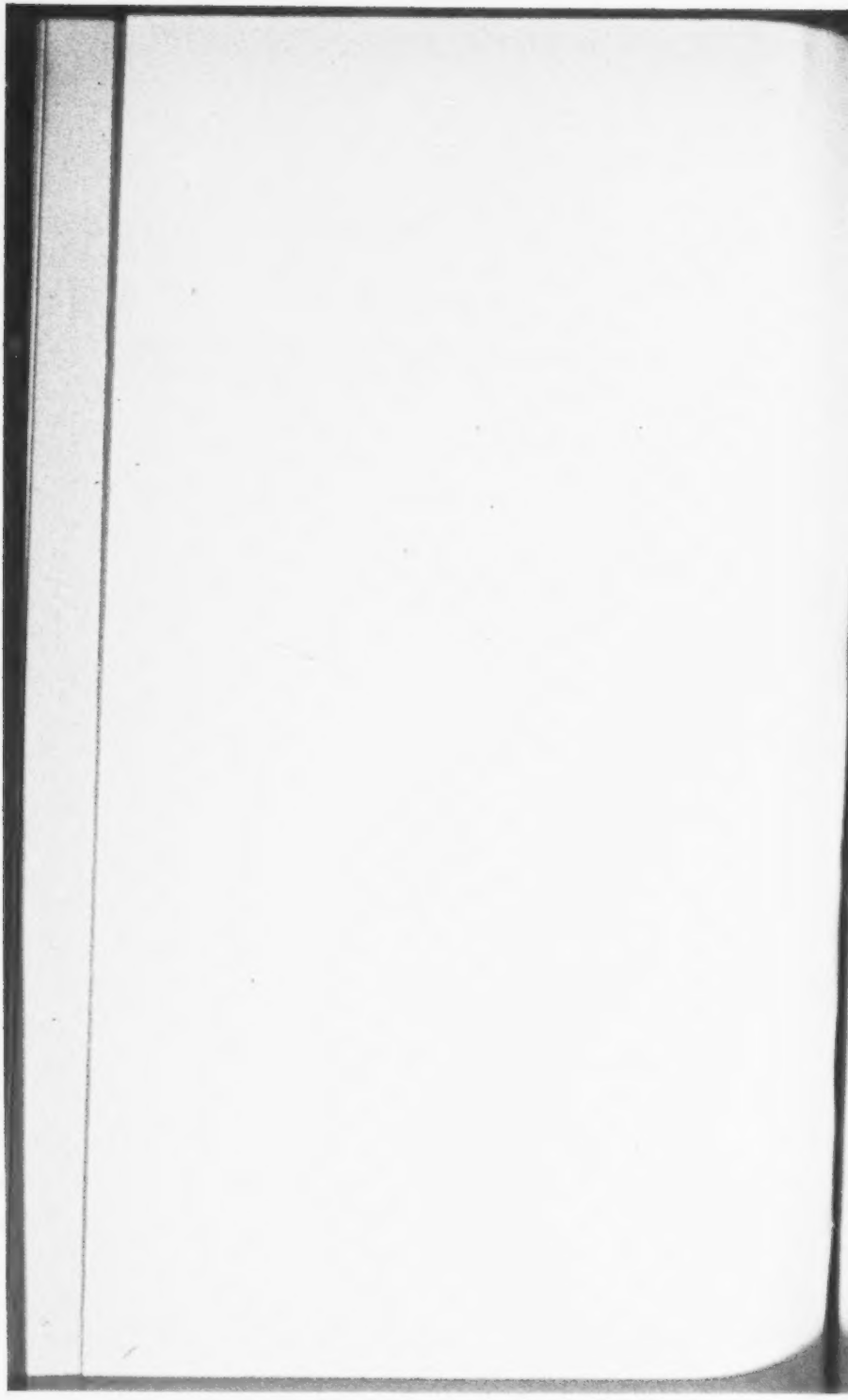
Statistical Department, Chicago, Nov. 11, 1911.

EXHIBIT No. 8.

A., T. & S. F. System.

ving Average Miles Per Hour on Citrus Trains Compared With Other Eastbound and All Westbound en San Bernardino and Chicago March 1st to 7th, Inc., 1910.

ound trains.		Citrus trains.			Other eastbound.			Avg. miles per hour.		
Total time between terminals.		Train miles.	Total time between terminals.		Train miles.	Total time between terminals.		West-bound trains.	Citrus trains.	Other E.-bound trains.
Hrs.	*Min.*		*Hrs.*	*Min.*		*Hrs.*	*Min.*			
207	5	1,377	131	15	810	95	27	9.7	10.5	8.5
684	41	3,549	278	45	3,380	288	42	11.1	12.8	11.7
533	50	4,321	346	47	3,725	345	18	13.7	12.5	10.8
676	5	4,004	267	40	2,288	186	35	10.8	15.0	12.3
413	35	3,456	203	28	1,152	102	30	10.2	17.0	11.3
403	50	3,432	176	30	2,002	158	22	10.6	19.5	12.7
257	39	2,598	169	55	1,635	160	35	13.1	14.2	10.2
385	25	3,013	144	10	2,096	133	13	11.9	20.9	15.8
238	32	2,266	124	10	1,442	93	35	15.1	18.2	15.5
309	25	2,352	142	57	1,078	78	7	12.0	16.6	13.8
264	16	2,592	155	22	1,296	92	56	12.3	16.7	14.1
407	45	2,568	139	15	1,819	133	10	12.4	18.5	13.6
293	50	3,175	187	..	762	48	10	13.8	17.0	15.8
452	6	3,456	210	4	2,700	195	40	14.1	16.4	13.8
457	21	2,592	175	36	2,268	183	55	13.0	14.8	12.4
498	35	2,599	153	14	1,469	113	51	12.9	17.0	13.0
570	13	2,520	162	32	2,730	185	35	12.9	15.5	14.7
549	12	3,225	236	37	2,580	208	40	12.0	13.6	12.4
7,603	25	52,895	3,405	17	35,232	2,804	21	12.2	15.6	12.5



1674-1675

EXHIBIT No. 7.

A., T. & S. F. Ry. System.

Comparison of Refrigeration & Divisions on Oranges and Lemons to $1.15 *Territory Season Ending Oct.* 31, 1911.

	Oranges.	% of total.	Lemons.	% of total.
Cars under Ice.....	7 635	44.00	1 073	28.86
Not under Ice.....	9 717	56.00	2 645	71.14
Total.....	17,352	100.00	3,718	100.00
No. of cars diverted.....	7,266	41.88	1,471	39.56
No. not diverted.....	10,086	58.12	2,247	60.44
Total.....	17,352	100.00	3,718	100.00
No. of Diverions made....	9,575		2,146	
No. of diversions per car diverted	1.32		1.46	
Per cent of total diversions made of total cars.....		55.07		57.72

Statistical Department, Chicago, Nov. 11, 1911.

(Here follows Exhibit No. 8, side pages 1676-1681.)

1682-1683 EXHIBIT No. 9.

A., T. & S. — Ry. System.

Analysis of Time in Transit on Citrus Compared with Non-perishable Freight Eastbound Out of California to Destinations—Missouri Riv. and East.

Sept. 1st to 14th, Inc., 1911.

Based on actual time of departure from San B'd'no and Fresno, and of arrival at Eastern Terminal as per Conductor's wheel reports and Agent's interchange reports detail on file in Statistician's Office.

	Citrus fruit. From San B'd'no east.	Dried fruit, canned goods, etc. From Fresno east.
Number of cars	105	64
Car Miles	209,321	136,588
Total time in transit	670 days	620 days
	13 Hr.	3 Hr.
	31 min.	35 min.
Average miles per hour	13.01	9.18
Average Haul	1 994	2 134
Average time in transit per car	6 days	9 days
	9 hr.	16 hr.
	16 min.	34 min.

Statistical Department, Chicago, Nov. 10, 1911.

1684-1685 EXHIBIT No. 10.

A., T. & S. F. Ry. System.

Percentage of Paying Load on Lemons Compared with the Average of All Freight.

	Lemons.	All freight.	Lemons when under ice.
Average load in car-ton (1909)	13.49	19.08	13.49
Average tare weight of car loaded in	19.90	18.50	19.90
Weight of ice	.....	.....	4.00
Total	33.39	37.58	37.39
Per cent of paying weight carried	40.4	50.8	35.1

Statistical Department, Chicago, Nov. 10, 1911.

1686-1687 EXHIBIT No. 11.

A., T. & S. F. Ry. System.

Cost of Freight Operation per Revenue Ton-mile. Fiscal Years 1902 *to* 1911, *Inclusive.*

Fiscal year—	Revenue ton-miles.	Freight operating expenses.	Cost per revenue ton-mile.
			Mills.
1902.....	4,231,748,520	$22,153,950.62	5.23
1903.....	4,705,540,965	25,129,195.50	5.34
1904.....	4,682,269,811	27,667,349.99	5.91
1905.....	4,521,523,561	28,806,243.74	6.37
1906.....	5,508,839,681	32,216,902.95	5.85
1907.....	*6,376,743,340	39,150,187.24	6.14
1908.....	*6,231,199,338	41,178,549.51	6.61
1909.....	*6,229,317,900	38,391,505.13	6.16
1910.....	7,012,896,589	46,205,577.41	6.59
1911.....	6,981,467,570	45,923,356.28	6.58

* D. E. & G. excluded for 1907 and S. F. P. & P. for 1907, 1908 and 1909 account freight expenses not compiled.

Statistical Department, Chicago, Nov. 10, 1911.

1688-1689

Exhibit No. 12.

A., T. & S. F. Ry. System.

Average Cost of Handling Car of Lemons from Santa Ana, Calif., to McCook, Ill., Showing Santa Fe Revenue When Destined Buffalo and When Destined New York Based on Figures & Average Given in Exhibits Filed in Other Hearings for Year Ending June 30, 1909.

	Car miles.	Gross ton-miles (40.62 tons), mileage.	Operating cost per rev. gross ton-miles. *Mills.*	Operating cost per car.
Santa Ana to Sheffield, Mo. (As per Ex.)	1763	71 248	.....	$165.13
Sheffield to Ft. Madison	214	8 693	1.966	17.09
Ft. Madison to McCook	220	8 936	1.895	16.93
Belt Line charge to connecting line	....	.....	.....	3.00
Total	2197	88 877		202.15
Taxes & Rentals & Interest per revenue loaded car-mile 3.140 cents				68.99
				271.14
Santa Fe proportion of revenue when destined Buffalo (85c. 100 lbs.)				229.33
Deficit				41.81
Santa Fe proportion of revenue when destined New York (75c. 100 lbs.)				202.35
Deficit				68.89

Statistical Department, Chicago, Nov. 11, 1911.

1690 Mr. Dillard: If the Commission please, I want to ask Mr. Call if that minimum could not be used in cars with a fixed bunker?

Mr. Call: No, not with a fixed bunker.

Mr. Dillard: There would not be enough supply of collapsible bunkers to take care of your products, would there?

Commissioner Prouty: That is a question you can talk about on the argument of the case, gentlemen.

Mr. Dillard: The reason I ask is because I thought your Honor inferred in your own question you would like to know something about it.

Commissioner Prouty: It all appears in the evidence. It appears there are some 5,000 cars with collapsible bunkers out of 18,000 cars in all.

Mr. Dillard: I was simply asking it to throw light on the question which your Honor put.

Mr. Norton: That point has been in the dark ever since the first time the case came up.

Commissioner Prouty: Have you another witness, Mr. Norton?

Mr. Norton: Yes, sir; I will call Mr. Robinson.

1691 FREDERICK S. ROBINSON was thereupon called as a witness on behalf of the defendants, and being first duly sworn, testified as follows:

Direct examination:

Mr. Norton: What is your full name?

Mr. Robinson: Frederick S. Robinson.

Mr. Norton: Where do you reside?

Mr. Robinson: In New York City.

Mr. Norton: What is your occupation?

Mr. Robinson: I am a broker in green fruit.

Mr. Norton: You are engaged in buying fruits in the market there?

Mr. Robinson: Yes, sir.

Mr. Norton: How long have you been in that business?

Mr. Robinson: I have been in that business ten years, and I have been in the importing business forty years.

Mr. Norton: I will ask you to state from your experience and knowledge of the fruit situation in New York City, what is the price of the California lemon on the average as compared with the price brought by the imported lemon?

Commissioner Prouty: Mr. Norton, in view of the decision of the Commerce Court, wnat is the pertinency of that question?

1692 Mr. Norton: It is in line with the suggestion made about one of our exhibits some time ago, that under the rate and service which we have been giving, this fruit is enabled to get to New York and ought, whenever it is available, to sell as against the imported fruit.

Commissioner Prouty: I think myself the testimony ought to be competent. We are trying this case on the theory it is not. We

have accepted the decision of the Commerce Court on that proposition.

Mr. Norton: The decision was not that we had no right to show the value and the worth and the serviceability of this rate and service to the people using it.

Commissioner Prouty: Do you claim the value of the service is determined by the fact that the traffic will move under it?

Mr. Norton: That is one of the elements.

Commissioner Prouty: That is one of the elements which you ought to take into account and which we ought to take into account in determining the reasonableness of a rate?

Mr. Norton: Yes sir.

Commissioner Prouty: Consequently, then if there is competition in New York, so this traffic will not move without the making of a dollar rate, we may take that into consideration in de-
1693 termining whether the dollar rate is reasonable?

Mr. Norton: No, that is an entirely different consideration. Whether they are able to pay the rate is not the question for the Commission to consider; but in ascertaining the value of this rate to the people who use it, you have a right to consider the movement of fruit under it, and the manner in which that fruit meets its competition.

Commissioner Prouty: It will take a good deal longer to convince me of that than it will to put the question. You may put the question.

Mr. Dillard: The question may be competent on this point, your Honor: The Commission fixes a rate for two years. It seems the average haul of the lemon is——

Commissioner Prouty (interposing: I said you might put the question, Mr. Dillard.

Mr. Dillard: I beg your Honor's pardon; I did not understand your Honor.

Mr. Norton: Read the question, Mr. Reporter.

The Stenographer (reading): "I will ask you to state from your experience and knowledge of the fruit situation in New York City what is the price of the California lemon on the average as compared with the price brought by the imported lemon."

1694 Commissioner Clark: Before he answers that question, state just what price you have reference to.

Mr. Norton: I am directing my question to the place where he buys and sells.

All this business is handled by auction in New York, is it not?

Mr. Robinson: Yes, sir.

Mr. Norton: Both the foreign and the local shipments are handled and bought at auction?

Mr. Robinson: Yes, sir.

Mr. Norton: Where all the people come to buy?

Mr. Robinson: Yes, sir.

Mr. Norton: And there this fruit is exposed by samples?

Mr. Robinson: Exposed to sale, yes, sir.

Mr. Norton: Now answer the question as to the price of the

California lemon on the average compared with the price brought by the imported lemons

Mr. Robinson: It will average 75 cents a box more than the imported fruit.

Mr. Norton: I will ask you, from your same knowledge and experience, to state whether, during the time you have been in New York, the influx of the California lemon has been on the
1695 increase in that City?

Mr. Robinson: In the last four years, it has increased very materially.

Mr. Norton: I will ask you to state next what is the value of this California lemon in the New York market in comparison with the California orange?

Mr. Robinson: The California orange—the relative value?

Mr. Norton: Yes; is it more or less, and how much?

Mr. Robinson: The lemons will value more than the oranges. The oranges will run nearly uniform about the same price from December up to April.

Mr. Norton: About how much more does the California lemon bring per box than the California orange?

Mr. Robinson: One dollar.

Mr. Norton: That is all.

Mr. Dillard: I understood you to say that the California lemon brings 75 cents more than the imported lemon?

Mr. Robinson: On an average it does, yes, sir. They are bringing two dollars a box more now in New York City.

Mr. Norton: Does the California lemon find sale in New York whenever there are any California lemons for sale?

Mr. Robinson: Yes, sir.

1696 Commissioner Prouty: Have you any questions, Mr. Call?

Mr. Call: No, sir.

Commissioner Prouty: You may be excused, Mr. Robinson.

(Witness excused.)

Commissioner Prouty: Have you any witnesses, Mr. Dillard?

Mr. Dillard: I desired to submit in evidence nothing further before the Commission, with this possible exception: I wired to California, asking that by the actual figures they should determine how much less the average haul of lemons is than the average haul of oranges, so we could get it exactly. My telegram may not have been clear. At any rate, the data are not here at this time. If I should get the figures at any time before the decision, I would like to file a statement to that effect, if it would not delay the Commission in any way, of course furnishing Mr. Call with the information.

1697 Commissioner Prouty: How much more testimony have you, Mr. Norton?

Mr. Norton: If you will adjourn now, I think we will be able to reach the conclusion of the thing in the morning, with probably one more witness.

Commissioner Prouty: In how much time?

Mr. Norton: Half an hour.

Commissioner Prouty: Having introduced your testimony, how much time do you desire for argument?

Mr. Norton: I would like upwards of an hour for myself—say probably three quarters of an hour. I want to make a rather full statement of the facts of the situation.

Commissioner Prouty: If we come in at half past ten, and you introduce your testimony in half an hour, that would give us four hours more for argument tomorrow. How much time do you want, Mr. Call?

Mr. Call: I can accommodate myself to the wishes of the Commission in that respect, Mr. Commissioner.

Commissioner Prouty: Would two hours be sufficient, Mr. Norton, for the defendants?

Mr. Norton: I think so, yes sir.

Commissioner Prouty: We will come in at half past ten
1698 o'clock tomorrow morning and will allow you half an hour in which to introduce your testimony. We hope you will conclude your testimony in half an hour, Mr. Norton, and then we will allow you two hours on each side for the argument of the case.

Mr Norton: I will try to do that.

Commissioner Prouty: The Commission will very likely ask you this question, which you are under no obligation to answer unless you want to. We made our order in the original disposition of the case establishing a blanket rate. We made it upon the assumption that the complainants and defendants, in fact all parties, preferred that kind of a rate. We assumed that the rate was tendered to us, and that it was for us to so order that that was a reasonable blanket rate—not whether it was a reasonable rate to New York or a reasonable rate to Denver. That order was contested before the Commerce Court upon the ground, among others, that we had no power to establish a blanket rate.

Before the Commission disposes of this case now, I would like to know whether the defendants will contest an order made on that ground, or whether it is your desire that a blanket rate should be established, and whether the question is to be what is a reasonable blanket rate, or what are reasonable rates. Of course you are
1699 under no obligation whatever to answer that question unless you care to.

Mr. Dillard: If I understand your Honor, your question is whether in this particular case we desire to contest it, or whether we will waive, even if we have any legal right, not asserting for the moment that we have, and not asserting for a moment that your Honors have not the power to revise a blanket rate—though as an original proposition I am sure you could not make one—your question is whether in this particular case we waive any right to contest it, to estop ourselves upon good faith, if we so state to you?

Commissioner Prouty: On that ground.

Mr. Dillard: Yes. Reserving every other ground if we are not content with the rate.

Commissioner Prouty: You may consider that proposition and answer it tomorrow morning if you care to. Mr. Call, on the other

side, may consider whether it is the desire of the complainant to have this Commission put in graded rates, if they find they have no right to disturb the $1.15 blanket rate.

We will now stand adjourned until half past ten o'clock tomorrow morning.

(Thereupon, at 4:30 o'clock p. m., the Commission adjourned until tomorrow, Thursday, December 16, 1911, at 10:30 a. m.)

1699½ Stenographer's Minutes.

Before the Interstate Commerce Commission.

Docket No. 3000.

ARLINGTON HEIGHTS FRUIT EXCHANGE et al.
vs.
SOUTHERN PACIFIC COMPANY et al.

WASHINGTON, D. C., *November* 16, 1911.

Also No. 2662.

1700 WASHINGTON, D. C., THURSDAY, *November* 16, 1911—10:30 o'clock a. m.

Present: Commissioners Clements (Chairman), Prouty, Lane, Clark, Harlan, McChord and Meyer.

Appearances: As noted on yesterday.

Mr. Dillard: If your Honors please, on yesterday I stated we would probably want to make, for the Southern Pacific, a statement similar to that which was introduced by Mr. Peabody. At the time I was of the impression we could do so, but I find we have not those statistics, and would have to go to the original waybills, which would take too long a time, to say nothing of the expense. It is thought our average haul does not vary much at all from that of the Santa Fe. For those reasons, I shall not put in that Exhibit.

The Chairman: Is there any testimony you want to offer this morning?

Mr. Dillard: I think Mr. Norton has some testimony to offer for the defendants.

1701 Mr. Norton: I want to recall Mr. Peabody for a question or two.

JAMES PEABODY, heretofore called and duly sworn as a witness for the defendants, was recalled and testified further as follows:

Direct examination:

Mr. Norton: Mr. Peabody, have you ascertained from the census department, from the date of the last census, the condition of the California lemon industry with respect to acreage and number of trees?

Mr. Peabody: I have the item as to the number of trees.

Mr. Norton: I wish you would read that into the record.

Mr. Peabody: This is taken from the census records. In 1890 there were bearing trees in California to the number of 82,052, and non-bearing trees to the number of 196,760, or a total of 278,812 trees. There was no distinction made in the Census of 1900 between bearing and non-bearing trees, but in 1910 the Census figures show there were of bearing trees 927,130, and of non-bearing trees 356,859, or a total of 1,303,989, showing that the industry has increased to a very, very great extent, and that in 1910 there had been
1702 set out during the previous three years—supposing three years to be the limit of non-bearing trees—376,000 trees, if that is the limit of non-bearing trees, as I understand.

Mr. Norton: There was another question that I wanted to put to you, Mr. Peabody, that I have forgotten just what it is.

Mr. Peabody: In regard to the total amount of lemons?

Mr. Norton: Yes; read that into the record.

Mr. Peabody: As to the consumption of lemons in the United States, the following figures are taken from the reports of the Bureau of Commerce & Labor:

In 1909 the imported lemons—this is given in pounds——

Mr. Norton (interposing): This is the consumption in the United States?

Mr. Peabody: Yes; this is the consumption in the United States. The imported lemons were 141,249,290 pounds. The California lemons were 173,076,700 pounds.

In 1910, which was the year of the small crop in California, the imported lemons were 148,437,958 pounds, and the California lemons were 126,960,880 pounds.

In 1911, the normal conditions of the crop being restored, we find the imported lemons were 140,396,624 pounds, and the Cali-
1703 fornia lemons were 185,542,620 pounds.

In other words, in 1909 the California lemons supplied 55.06 per cent of the total consumption; in 1910 the California lemons supplied 45.92 per cent of the total consumption; and in 1911 it supplied 56.93 or almost 57 per cent of the total consumption of the United States.

Commissioner Prouty: Does your year end in June?

Mr. Peabody: These are not the fiscal years; those are the fruit years.

Commissioner Prouty: What is the crop year? When does it end?

Mr. Peabody: October 31. From November 1 to October 31 is the citrus fruit year, is it not, Mr. Call?

Mr. Call: That is the railroads' citrus fruit year. The grower's year is from August 31 to August 31.

Mr. Peabody: It is a corresponding period?

Mr. Call: May I inquire the purpose of this testimony?

Mr. Norton: As I stated yesterday in reply to a similar inquiry, it is to show the value of the service to these people and how the industry has been progressing.

Mr. Call: Do you claim that the condition of the industry is available to the carriers for the purpose of raising a rate and
1704 is not available to the shippers when the question of reducing the rate is to be considered?

Mr. Norton: It is a question of what the traffic will bear, what it ought to bear, what it should bear, and how the business has moved under the rate.

Commissioner Prouty: Do you claim that it can be considered by the carrier and cannot be considered by the Commission?

Mr. Norton: It can be considered by the Commission, yes. We are endeavoring to show what this traffic can and ought to bear and how the business has moved under the rates. But the shipper cannot ask us to reduce a rate because it is poverty stricken—that is, legally—although it did ask us morally, and we reduced it.

Commissioner Clark: That is, you ask to raise a rate because he is prosperous, and he may not ask you to reduce it because he is poverty stricken?

1705 Mr. Norton: No, you state it too broadly. As I shall explain, when it comes to argument, we intended, when this rate was reduced, to restore it as soon as the time should come, and I am going to show you the time has come, and this is a part of the showing.

Mr. Peabody, there was some vague and remote reference yesterday to trains on some road or other handling deciduous fruit at a much higher rate of speed than we handle this citrus fruit. Is there such a train that you know of?

Mr. Peabody: That was supposed to be a train moving over the Western Pacific. I have understood, in an indirect way that the Western Pacific did make some attempt to have a rapid movement on that fruit. As to the facts concerning it, I am wholly ignorant.

Mr. Norton: How is it on our own road?

Mr. Peabody: As a matter of fact, it was no better time than we are making regularly on our own road, as shown by my exhibit No. 9, on page No. 9 in the set of exhibits furnished by me yesterday, if you will notice that exhibit.

Mr. Norton: That will be sufficient, because we promised to get off the stand promptly this morning.

The time stated for the Western Pacific is the same as our
1706 *our* exhibit shows for handling the fruit?

Mr. Peabody: Practically the same, yes. Our exhibit shows for fourteen days all our trains from September 1 to September 14, which was the data at hand, occupied six days and nine hours and sixteen minutes in transit.

Commissioner Lane: From where?

Mr. Peabody: From San Bernardino to Chicago. Every car coming to Chicago was taken for those fourteen days.

Commissioner Prouty: That does not include the gathering time, but only the transportation time?

Mr. Peabody: That is beyond San Bernardino.

Mr. Norton: Have you made inquiry, Mr. Peabody, about the

loading of these collapsible bunker cars, in which we hear there is such a large revenue?

Mr. Peabody: I made some inquiry in regard to the proposition.

Mr. Norton: How have they been loaded on our road?

Mr. Peabody: I find that so far as we have any record there have been practically no cars loaded with the bunkers up. I understand we did deliver some cars for loading with the bunkers up, and the shippers refused to load them until the bunker was lowered.

1707 Mr. Norton: That all appeared at the former hearing.

Commissioner Prouty: You understand, do you, if the bunkers are up the car can be lowered to 34,000 pounds?

Mr. Peabody: It holds very much more, but the shippers refuse to load with the bunkers up.

Commissioner Prouty: You have no opinion this morning as to how much of a reduction in the rate would be justified by that increase in the minimum?

Mr. Peabody: I propose to figure that out and write you on the subject.

Mr. Norton: That is all.

Cross-examination:

Mr. Call: I would like to ask two or three questions on an exhibit which I passed in examination yesterday.

Turning to your tabulation headed, "Cost of Freight Operation per Revenue Ton Mile, Fiscal Years 1902 to 1911," in figuring your total cost from which you ascertained your revenue ton-mile cost, what items did you include in arriving at your total?

Mr. Peabody: I divided the——

Mr. Call (interposing): I am not talking about dividing.

1708 I am asking what items you included in getting your total.

Mr. Peabody: The entire revenue movement.

Mr. Call: The entire revenue movement?

Mr. Peabody: Yes, sir.

Mr. Call: You included in that what you considered all your freight costs?

Mr. Peabody: Yes, sir, divided into the total cost of the items of revenue movement.

Mr. Call: You added, in making that total cost, your company freight?

Mr. Peabody: It is not added at all. It is in there.

Mr. Call: It is included in there?

Mr. Peabody: Yes, sir, it is in there.

Mr. Call: For whatever purpose it is moved?

Mr. Peabody: Yes, sir, for whatever purpose it is moved.

Mr. Call: Or whatever use the company had for tonnage, the cost of that is included in this total?

Mr. Peabody: No, that is only for the operating tonnage. That does not include such items as ballast for betterments, and things of that sort. Nothing of that sort is in there.

Mr. Call: For instance, in building concrete bridges or stations

or side-tracks, or anything of that kind, as to the material
1709 for that, do you mean that you have charged a revenue to the company for that? Where is the cost of that?

Mr. Peabody: If it was a repair or maintenance charge; the cost is in the cost of freight operation. If it was a betterment charge, it is not.

Mr. Call: Where does that cost go?

Mr. Norton: I would suggest the Commission knows about our figures on that.

Mr. Peabody: We have stated the cost of hauling all material for maintenance is in the total freight operating cost.

Mr. Call: Is there any part of that charge for passenger?

Mr. Peabody: Yes.

Mr. Call: Your repair items?

Mr. Peabody: Yes.

Mr. Call: Is any part of your company freight, which you say is operating company freight, charged to passenger service?

Mr. Peabody: No.

Mr. Call: It is all charged to freight?

Mr. Peabody: Any that appears in the freight operation sheet, There is a lot of cost of operating of passenger trains charged to passenger service for freight operation.

1710 Mr. Call: What I am talking about is the company freight. Is any part of company freight, which you have included in this cost, charged to passenger service?

Mr. Peabody: Yes.

Mr. Call: What part of it and on what basis is it charged?

Mr. Peabody: Anything we move on our passenger trains that is for freight, is not charged to passenger service.

Mr. Call: I mean what you call your company freight, such as fuel and supplies.

Mr. Peabody: No.

Mr. Call: And upkeep of your road and repairs?

Mr. Peabody: No.

Mr. Call: Track repairs?

Mr. Peabody: No.

Mr. Call: All those items are charged to freight, are they?

Mr. Peabody: Yes.

Mr. Call: And included in this cost from which you ascertained your revenue ton mile cost?

Mr. Peabody: If they are carried on freight trains, yes. If carried on passenger trains, no.

Commissioner Lane: Does your statement include the side-
1711 tracks, too, and all branch lines?

Mr. Peabody: Maintenance charges?

Commissioner Prouty: Your figures given here for freight operating expenses, revenue, and so forth, are for the entire system?

Mr. Peabody: The entire system.

Commissioner Lane: There is no distinction made between main line haul and branch line haul?

Mr. Peabody: Not in these figures. In the exhibit showing the

cost of the car of lemons, we only take the actual cost on the particular line over which the lemons travel. In that case it is the main line over which the lemons travel.

Mr. Call: Is the item of rentals included in that gross?

Mr. Peabody: The item of rentals is divided between freight and passenger.

Mr. Call: The rental of freight cars which you actually pay is included in that?

Mr. Peabody: Oh, yes.

Mr. Call: Is the rental you pay to your subsidiary refrigerator car line included in this?

Mr. Peabody: The what?

Mr. Call: Are the rentals you pay to your car-line com-
1712 panies for refrigeration cars included in that item?

Mr. Peabody: The mileage?

Mr. Call: The rentals that you pay, or the mileage, whichever you have in mind to call it. You rent your refrigerator cars from a subsidiary company which you have formed, and you pay a rental or mileage for them?

Mr. Peabody: I could not answer that without going to the record. I should say I think not. I will not be sure as to that, but I think not. I think we do not pay any, but I am not sure as to that.

Mr. Call: I notice by your exhibit and contract that you have agreed to pay. I was wondering whether you did pay, and whether that was in this item of expense.

Mr. Peabody: Of recent years my impression is we pay no mileage to the refrigerator company for the cars. I can, by asking a question of our Assistant Auditor here, answer that question positively.

Mr. Call: Have you included any interest in this item?

Mr. Peabody: Yes.

Mr. Call: What interest have you included in the item?

Mr. Peabody: The proportionate part chargeable to freight traffic.

1713 Mr. Call: On what debt have you included it—all your debts?

Mr. Peabody: The interest that we pay.

Mr. Call: The interest that you pay on your bonds and notes and everything else?

Mr. Peabody: Yes, sir; all the interest we pay.

Mr. Call: All interest you pay is included in here as a part of your freight cost?

Mr. Peabody: No, not in here.

Mr. Call: That is what I am talking about.

Mr. Peabody: No, nothing but the operating cost is here. No rentals are in here; nothing of that sort is in here. You are referring to the transportation of lemons?

Mr. Call: Yes. The movement of all your empty cars, the cost of moving them, is included in that cost, is it not?

Mr. Peabody: Yes, sir.

Mr. Call: That is all.

(Witness excused.)

The Chairman: Does that conclude the testimony, gentlemen?

Mr. Norton: I want to ask a question or two of Mr. Chambers.

1714 EDWARD CHAMBERS was thereupon called and duly sworn as a witness on behalf of the defendants, and testified as follows:

Direct examination:

Mr. Norton: Mr. Chambers, Mr. Mortensen testified yesterday about the comparative cost of assembling citrus fruit and deciduous fruit, the import of which was that the assembling of citrus fruit is at a somewhat less cost. What have you to say about that?

Mr. Chambers: I think it is fair to say the cost of assembling fresh fruit, all kinds of fresh fruit in California that is loaded into refrigerator cars, is the same. He is drawing the line entirely too fine in trying to figure out a difference.

Mr. Norton: Of course you are known to the Commission as having been in this business since it started; and this is your observation?

Mr. Chambers: Yes, sir.

Mr. Norton: I will ask you to say what you will about the movement of deciduous fruit from California, whether the service given by us is more rapid or is better than the service given to the
1715 other fruit.

Mr. Chambers: The service is about the same as on the citrus fuits.

Mr. Norton: I will ask you to say what you will about having the same rate or separate rates on the orange and the lemon.

Mr. Chambers: I think the orange and the lemon should take the same rate.

Mr. Norton: Why?

Mr. Chambers: There is no difference in the transportation conditions, and I think an effort tending to separate the lemons from the oranges and to figure out there is a difference in the cost, or the carrier makes more money in carrying the lemons at a lower rate or as much as they do on the oranges at a higher rate, is also drawing the line too fine. I do not think that can be done practically. The carriers handle them all together, and the arrangements for taking care of the business are practically the same in each case. In fact, they are handled together in every way, in our calculations and in our arrangements.

Mr. Norton: Can you tell me anything of the movement of this citrus fruit, or of lemons, into this Southeastern territory which does not join in these tariffs? Do you know anything about the
1716 volume of it?

Mr. Chambers: The volume is very small.

Mr. Norton: Some of it goes there?

Mr. Chambers: Some of it goes there, yes, sir.

Mr. Norton: Is there anything else you want to say about this matter that has been on hearing?

Mr. Chambers: I was going to explain about the collapsible bunker cars, that the shippers generally up to date have refused to load those cars with the bunkers collapsed, and we have practically loaded none of them. They have stated the ventilation was insufficient with the bunkers collapsed, and that the ventilating devices which are different from the ordinary car or from the other cars are not as good or as easily manipulated as they are in the ordinary car, and that the ventilation itself in the collapsible bunker car with the bunkers down, is not as good as it is in the ordinary car.

Commissioner Prouty: It is said, Mr. Chambers, that lemons do not require as good ventilation as oranges, and that while oranges could not be loaded successfully with the bunkers up, the lemons could be. What do you say as to that proposition?

Mr. Chambers: I do not think there is much in that, because in one section they will claim that, and in another section it will be
1717 different. I do not think I would want to say or take the chances that the lemon could be transported any more safely in the collapsible bunker car than the orange.

Commissioner Prouty: Would it be possible for the carriers to furnish the lemon shippers with collapsible bunker cars?

Mr. Chambers: It would not at all times.

Commissioner Prouty: How many of these cars have you on your line?

Mr. Chambers: We have twenty-five hundred.

Commissioner Prouty: And what is the total number of refrigerator cars in the California citrus fruit service?

Mr. Chambers: What is the total number on our line?

Mr. Commissioner Prouty: Yes.

Mr. Chambers: About sixty-five hundred cars in service that are suitable for handling fruits.

Commissioner Prouty: So one-third of your cars, approximately, have the collapsible bunker?

Mr. Norton: Are you going to retain those collapsible bunkers?

Mr. Chambers: I was going to explain that. I think our General Freight Agent in Southern California made some investigations
1718 through the different shipping associations as to the amount of damage or amount of decay, or the percentage of decay in the collapsible bunker cars with the bunkers down as compared with the decay in the other refrigerator cars with the stationary bunkers, and I think that is what Mr. Mortensen referred to yesterday when he said the percentage of decay was a little bit greater in the collapsible bunker car than it was in the other cars.

Mr. Norton: There was some suggestion that the collapsible bunker, as it is in those cars, will have to be removed. Do you know anything about that?

Mr. Chambers: I would say the collapsible bunker car, so far, has been of no benefit to the carriers, and I am not clear in my own mind that it is going to be of any practical benefit.

Commissioner Prouty: Up to the present time you have never loaded the minimum which required the use of the collapsible bunker car; that is to say, if a man would put in 34,000 pounds, he

did it as a favor to you. If you had a right to make and maintain that minimum, it would be an advantage to you, would it not?

Mr. Chambers: You cannot have a different minimum in the different kinds of cars. We have found that impracticable,
1719 not only in the matter of citrus fruit traffic, but in other traffic. If you do, and if you have any difference in the rate, the shipper is calling for the car that will load the high minimum at the low rate, and we may not have the car always to place for him, and then we are up against applying the lower rate on the smaller load when we are unable to furnish the car that is asked for.

Commissioner Prouty: That is why I asked the question a moment ago, whether as a practical matter you can furnish the collapsible bunker cars for the lemon shippers. Why not? You only handle 3,500 carloads of lemons as against 18,000 carloads of oranges, and one-third of your cars are collapsible bunker cars. What is the reason you cannot furnish the lemon shipper with collapsible bunker cars at all times.

Mr. Chambers: I will tell you the reason. In the early season, lemons move very lightly. The heavy movement of lemons is in June. The heavy movement of oranges is in April and May. It requires every car we have in the service. We could not afford to hold these collapsible bunker cars for the lemon business, because we have to have cars to take care of the orange business.

1720 Commissioner Prouty: You have to have some cars there for lemons?

Mr. Chambers: Yes, we have whatever car comes.

Commissioner Prouty: If the Collapsible bunker car is no better for handling oranges, why could you not arrange matters so the other cars would go forward with oranges, and the collapsible bunker cars could be there for lemons?

Mr. Chambers: We frequently run for thirty or sixty days and load every car that comes in. We have to work nights to unload the cars and get them ready to place in the morning to load the fruit out.

Commissioner Harlan: In saying that the rate on lemons ought to be the same as the orange rate, do you take into consideration the shorter haul on lemons?

Mr. Chambers: The lemons are varying all the time. You can not say the percentage of the movement of lemons will be any more fixed one year than another. The rate covers the whole United States, and the lemon shipper can get to any market in the United States that he chooses to reach, at the same transportation charge, and take advantage of the highest priced market, his cost being the same to all markets. I do not think it is a fair proposition to have the rate lower on lemons than or oranges.

1721 Commissioner Prouty: No, the haul on lemons is less than on oranges and always has been.

Mr. Chambers: You cannot say the cost of hauling lemons, on the average, is less than the cost of hauling the oranges?

Commissioner Prouty: It must cost you less to haul lemons 2,000 miles than oranges 2,500 miles.

Mr. Chambers: But the bulk of the lemons we have when the movement is light, when the other movement is light, and a great many of them move when we do not have sufficient to fill the trains. Oranges begin to start in May. April is usually the month of large shipments, May decreases, and then June is less than that. The oranges begin heavily in June.

Commissioner Prouty: One would think if the lemons come along when you do not have any business, you would like them for that reason.

Mr. Chambers: But they are not moving in full trains. Oranges move in full trains, and the lemons do not. There is never a full train of lemons. They have to move with the oranges. I do not see how there could be any question but what the orange movement helps to keep the cost down on the movement of lemons, because they move together.

1722 Mr. Durbrow: I want to ask one or two questions, Mr. Chairman, before the cross-examination begins.

The Chairman: You may proceed, Mr. Durbrow.

Mr. Durbrow: Mr. Chambers, in what territory do these deciduous fruit shipments originate?

Mr. Chambers: Very largely in territory, I think, close to Sacramento.

Mr. Durbrow: Is that territory within a smaller radius than the territory in which citrus fruit originates?

Mr. Chambers: I think it is practically the same.

Mr. Durbrow: I want to direct your attention to Statement No. 5, which was introduced yesterday——

Mr. Chambers (interposing): I would say for Mr. Mortensen that I think he is overlooking the grape shipment, as the grapes are about one-half of the movement of citrus fruits, and they are largely produced close to Sacramento, and around Fresno, in the San Joaquin Valley.

Mr. Durbrow: You mean one-half of the movement are deciduous fruits?

Mr. Chambers: Yes, deciduous fruits.

Mr. Durbrow: They all originate in a very compact territory, a small area?

1723 Mr. Chambers: Practically they originate within 40 miles of Sacramento, and at Fresno.

Mr. Durbrow: Do the deciduous fruit shipments move any time of year when the orange shipments are not moving in the heaviest amount?

Mr. Chambers: Very largely; yes, sir.

Mr. Durbrow: What product determines the maximum number of refrigerator cars the carriers are obliged to employ in the California movement?

Mr. Chambers: The citrus movement, undoubtedly.

Mr. Durbrow: With reference to the transportation of apples, what can you say with reference to the diversion of that particular commodity as compared with the diversion of citrus fruits?

Mr. Chambers: There are not many diversions of apple ship-

ments; that is, in the way that we divert the citrus shipments—because the apples that are diverted are largely stored in transit, and they are reshipped from the storage point.

Mr. Durbrow: When they are stored in transit, what charge is imposed upon the shipment?

Mr. Chambers: A charge of 10 cents per 100 pounds in
1724 addition to the rate for the direct shipment.

Mr. Durbrow: And a switching charge as well?

Mr. Chambers: A switching charge of $5. That is left largely with the carrier upon whose tracks the storage takes place.

Mr. Durbrow: As I understand it, most of the apple shipments or a great percentage of them that are diverted, are diverted in that manner, being stored in transit?

Mr. Chambers: Yes, sir.

Commissioner Lane: That involves a totally different handling from the diversion referred to here?

Mr. Chambers: The work of the carriers is about the same. You have to readjust your accounts. For example, a car starts out of California, going to Kansas City, destined to Kansas City for storage in transit. With the Santa Fe, we would get the full earnings up to Kansas City. We would get the $1 rate or the $1.10 rate, as the case may be. If that is reshipped from the storage point, say to New York, we have to readjust the charges and readjust the account back. We have to make a new waybill, turning over to the connecting carrier or hauling it on to Chicago ourselves.

Mr. Durbrow: And checking against the inbound rate?

1725 Mr. Chambers: Yes, sir. In that respect there is a little more work about it than there is in handling the citrus fruit diversions.

Commissioner Lane: From where do you get your apples?

Mr. Chambers: From the Watsonville District and from the Southern Pacific, and some off of the California Northwestern, north of Sacramento.

Commissioner Lane: From Watsonville how do they get to you?

Mr. Chambers: At Stockton.

Commissioner Lane: They are hauled by the Southern Pacific from Watsonville up through San Jose, across through Pleasanton and over to Stockton?

Mr. Chambers: Yes, sir.

Commissioner Lane: What division do you pay the Southern Pacific on that?

Mr. Chambers: We pay them 23 per cent of the Missouri River rate, or the west-of-the-Missouri River proportion of the through rate—the proportion west of the Missouri River of the through rate.

Mr. Durbrow: Mr. Chambers, do you know whether any shippers of lemons from the California territory have shipped on the $1.15 rate?

1726 Mr. Chambers: Yes, sir.

Mr. Durbrow: And have those shippers been able to make their shipments and market their oranges in the eastern markets?

Mr. Chambers: I have heard no complaints from them at all.

Mr. Durbrow: To the contrary, have any of these shippers who have shipped under the $1.15 rate told you and expressed the unqualified opinion that that rate enables them to successfully compete with all other lemons in the market, and that they have reached all the markets where their shipments usualy terminate?

Mr. Chambers: They have; yes, sir.

Commissioner Lane: Who are those men?

Mr. Chambers: Mr. Boles, of the San Diego Land & Town Company. They ship from National City, and ship largely to Boston, practically all of their lemons go to Boston.

Commissioner Lane: That is, the $1.15 rate is a reasonable rate to Boston?

Mr. Chambers: They ship some to Chicago and somewhere else. They say they were not handicapped in paying that rate as against competition they have to meet in Boston.

Mr. Durbrow: That is all.

1727 Cross-examination:

Mr. Call: Mr. Boles is the local manager of one of your directors who owns that, is he not?

Mr. Chambers: But there are others besides Mr. Boles.

Mr. Call: Who else told you that?

Mr. Chambers: I do not like to state who they were. However, the Randolph Fruit Company is another concern that is shipping generally. They said to me, "All we want you to do is to say you are going to give us the same rate that is finally made in this lemon case, to protect us against the others."

Mr. Call: Mr. Chambers, in your opinion as a freight man, should the weight of the revenue load be a factor in fixing rates?

Mr. Chambers: It should not.

Mr. Call: It should not?

Mr. Chambers: No, sir. I never have used it, and I do not think any other freight man has ever used it.

Mr. Call: You think a 20,000-pound minimum as compared with a 30,000-pound minimum should make no difference in the rate?

Mr. Chambers: Mr. Call, it is just a question of the value of the service to the shipper. I do not know of any commodity we handle in any volume but what the rate has been fixed upon the
1728 value of the service, and it was absolutely necessary to make that rate to move the traffic, and the minimum ran from 30,000 up to 50,000 pounds.

Commissioner Prouty: What do you mean by "value of the service"?

Mr. Chambers: I mean what the traffic can reasonably bear, whether it is in competition with other carriers or competition with other markets, or whatever it may be.

Commissioner Prouty: Then it would not necessarily follow the rate on lemons and oranges ought to be the same unless the lemons could bear the same rate?

Mr. Chambers: We believe they can bear the same rate. In fact, we believed they could not at one time bear the same rate, and we

cut the rate down to $1. The dollar rate was fixed upon the value of the service. That determined the rate.

Mr. Call: What amount do you figure on leaving to the shipper when you determine what it can bear?

Mr. Chambers: It is a reasonable profit to the shipper. The shipper usually takes care of that himself.

Mr. Call: Could you figure up what each shipper can pay?

Mr. Chambers: I do not like to tell all that. That is a
1729 matter of operating between the business men.

Mr. Call: When you are fixing a rate, you figure out whether a shipper can keep alive and keep going on a certain rate?

Mr. Chambers: I will tell you what I mean. The shippers of lemons came to the carriers and said, "We cannot bear this $1.25 rate. We are not making any money now shipping under that rate. We have to meet this foreign competition east of Chicago. We cannot bear more than $1. $1 will just about let us out, and might give us a little profit at times. If you do not give us this we will have to go out of business and you will lose the shipments." Of course we made the rate under those conditions.

Commissioner Prouty: Then you did make the rate because you wanted the business. Mr. Peabody said you did not want the business.

Mr. Chambers: Yes, sir; we made the rate to keep the lemon shipper in business. We felt we were just as much interested in that.

Mr. Norton: I did not understand Mr. Peabody to say that, Mr. Commissioner.

Mr. Call: Do you not have to take into consideration the
1730 interests of the consumer in fixing rates? For instance, where you are moving a commodity that the consumer must have, for instance the wheat crop that everybody must have in order to live, and where the consumer must have at the market price for that wheat, even if it takes his last dollar that he has on earth, do you not have to figure the consumer's interests?

Mr. Chambers: I think that is a question not very often considered or necessary to be considered by the railroad man. Such a commodity as wheat is grown generally all over the country. Competition between markets takes care of that. Necessarily, we have the same rates on wheat, or you could not move it from one market to another.

Mr. Call: You could under general agreement, the way most of these rates are made?

Mr. Chambers: No, they are not made that way. That is where you are mistaken.

Mr. Call: You have not made any rates that you make by general agreement?

Mr. Chambers: Yes, I have made lots of rates that were not made by general agreement. You know the citrus fruit rates were made on application of the shippers to the carriers for lower rates. That is how these rates were made.

1731 Mr. Call: You do not believe in Mr. Peabody's way of determining the proper rate—by figuring out the gross ton mile cost?

Mr. Chambers: I have just given you the way the rates are made generally all over the country.

Mr. Call: Do you really think that figuring out of the gross ton mile cost and then assuming that it cost as much to move citrus fruits as everything else less than carload lots and short haul and local shipments and everything else is a fair way to make the rate?

Mr. Chambers: I do not go into the exact cost of moving the traffic, and I do not like to say that I do not handle anything that is below the out-of-pocket expenses but it is a question always of how much it will bear. I could not tell you anything that moves in large volume that that has not been the determining factor.

Mr. Call: You would not pay any attention as a rate-maker for the Santa Fe to this set of figures of Mr. Peabody's?

Mr. Chambers: I would not go into such figures. I pay general attention to the cost of the handling of traffic. You have to consider the character of the equipment necessary to take care of it, and how far you have to haul it empty, whether you will
1732 have loads in both directions, and so forth.

Mr. Call: Would you take into consideration carload earnings in making a rate?

Mr. Chambers: No, sir, I would not. I take it into account in determining whether or not I could make the rate that the shipper asked for, and that I felt was really necessary to handle the traffic. Yes, I would take into consideration of course, the carload earnings in determining just whether I got above my out-of-pocket expenses.

Mr. Call: Where do you get your information upon which you form that conclusion as to what the shipper can bear?

Mr. Chambers: Usually from the shipper.

Mr. Call: From what shipper?

Mr. Chambers: From every shipper. I do not know any shipper that ever came to me that did not know what he wanted. He always knows pretty well what he wants.

Mr. Call: You really see a small per cent of the shippers, of course, on your line?

Mr. Chambers: I beg to differ with you. I see a large per cent of shippers on the line out of California.

Mr. Call: And from your talk with them and looking around over the country, you conclude about how much they can
1733 afford to pay and charge them accordingly.

Mr. Chambers: No, I do not do it in that way at all.

Mr. Call: That is what I understood you to say you did.

Mr. Chambers: I think you should know how the rates are made, and you know how the shipper comes to the railroad man and asks for those rates, and you know what the railroad man takes into consideration. When the shipper makes a statement to me of what he needs and why he needs it, of course I look into it a little. It depends on who the shipper is. As to some of them, I will take their word for it, and as to others I will look into it a little before I decide.

Commissioner Lane: There may be some of these shippers who

could stand a $1.50 rate and others only a 90-cent rate. How would you fix that up?

Mr. Chambers: You mean on the same commodity? I am speaking of each commodity by itself?

Commissioner Lane: Take the same commodity; take your lemon man. We have heard a lot of testimony here to the effect there are some shippers that cannot make any money, and we have other testimony showing they can make good money.

Mr. Chambers: You cannot go to work, where there is a commodity scattered among so many different producers, and
1734 satisfy all of them. You have to make up your mind on the average of the thing.

Commissioner Lane: But your rate is based on the theory of what the traffic will bear, what the shipper can afford to pay, why do you not rebate so much of the $1.15 to the man——

Mr. Chambers (interposing): That is not a practical thing to do. You are talking about making a rate on lemons, one that gives a little advantage to the man that produces the high-grade lemons, and the man who properly cares for his orchard has a little the best of it in that way. He perhaps could bear a little higher rate than $1.15.

Commissioner Lane: Have you ever figured whether they could stand a $1.25 rate on these citrus fruits, or $1.40?

Mr. Chambers: No. They pay $1.40 to some points now on both lemons and oranges—to Southeastern territory; my recollection is the rate there is $1.40.

Commissioner Lane: Is there any reason why you should not raise it?

Mr. Chambers: When the orange rate was $1.25, the orange growers came to the carriers and said, "This is a little high for us, and we have to meet competition from Florida as well as this for-
eign competition, and we must have a lower rate. We want
1735 $1.15 now." We took that into consideration, investigated it pretty thoroughly, and they gave us a lot of statements of their sales and their costs. After a thorough investigation we reached the conclusion that their application was reasonable, and we reduced the rate to $1.15 on oranges. That same year we reduced the rates, the conditions changed some, and it was the best year they had in 10 years. The following years were not so good.

Commissioner Lane: Suppose the good years had continued, would you then feel that reasonable rates would be a certain amount more?

Mr. Chambers: If they had continued like that first year after the reduction, I think we would likely have had an advance in the rate again to $1.25. I do not think any of the following years were as good as that year.

Commissioner Lane: Suppose the industry should be so profitable it could bear $1.75 rate, is there any reason why you should not raise the rate to $1.75?

Mr. Chambers: I do not know that we would do that, but there is no reason why it could not pay $1.25.

Commissioner Lane: If they were making 20 per cent instead of 7 per cent, you could raise it to $2, could you not?

1736 Mr. Chambers: That would be unreasonable.

Commissioner Lane: Why?

Mr. Chambers: Because it would be too high. It would be beyond any rate we carry, and I do not think we would do that.

Commissioner Lane: But the traffic would bear it?

Mr. Chambers: That would be above the class rates. The class rates were the basis of these rates in the beginning. We never go beyond the class rates, in any advance.

Commissioner Lane: But the traffic would bear it?

Mr. Chambers: It might bear it and might not. Some perishable freight does pay $2 or $2.25, but that is not moved in very large volume and it does not enter into general consumption from the same points of origin, like the oranges and lemons do.

Mr. Norton: I understood you to say what the traffic ought fairly to bear, and not what it can bear.

Mr. Chambers: Yes.

Commissioner Lane: That is not what he said, Mr. Norton.

Mr. Chambers: Yes, it is.

Commissioner Lane: If you will read his testimony, you will see he said "all the traffic can bear."

Mr. Norton: I think he used the word "fairly."

1737 Mr. Chambers: I mean what the traffic will reasonably bear.

Mr. Norton: He used one of those adjectives, I know.

Mr. Durbrow: You have made a rate on other classes of products than those you have mentioned here and you have made a low rate or a $1.10 rate on dried fruits, have you not, moving to these Eastern territories—raisins, figs and prunes?

Mr. Chambers: Yes, sir.

Mr. Durbrow: Those rates have enabled California shippers and producers to drive foreign commodities out of all the United States markets, have they not?

Mr. Chambers: Yes, sir.

Mr. Durbrow: That is all.

Mr. Chambers: There is one more thing I want to explain that came up in Mr. Mortensen's testimony, and that was about the movement of vegetables. The vegetable movement is from November until March, when the orange movement is light.

Mr. Norton: That is all.

(Witness excused.)

The Chairman: Gentlemen, does that conclude the testimony? If so we are ready to hear the oral arguments.

Mr. Call: May it please the Commission, before proceeding

1738 with the argument, I would like to ask that some of these questions be settled as to what system of rates we will argue. Something was said last evening with regard to asking the roads to say what they wanted in the way of a rate.

The Chairman: Perhaps, in view of something which I under-

stand was said yesterday after I left the hearing-room, that question had better be brought up now.

Have you anything to say this morning respecting the question as to whether you are going to contend for the integrity of the blanket rate or object to it, Mr. Norton?

Mr. Norton: What does Mr. Call say?

Mr. Lamb: The question was not asked of us.

Mr. Norton: Commissioner Prouty said you would be asked also.

Mr. Call: If the Commission desires, I have no objection to stating our position.

Commissioner Lane: The question asked yesterday was not as to what the desire of the shipper is, but as to whether the railroads would take the question before the Commerce Court as to the legality of a blanket rate.

Mr. Norton: That was part of the general proposition.

Commissioner Lane: I would like to hear an answer on
1739 that proposition.

Mr. Norton: That is part of the general proposition put up to us, but Mr. Prouty said these people would be asked——

The Chairman (interposing): They attack the rate as it is, the blanket rate, and they do not indicate any desire to break up the blanket rate so far.

Mr. Norton: Our history shows what we have wanted with respect to this rate, and the present situation shows what we have wanted. We had intended to give you an answer before the close of the argument. I do not know that we can now, this morning. We assumed the case would go on and be argued without regard to what rate might be desired by either party. Before the case is submitted, we will give you an answer.

Commissioner Prouty: If this Commission is to be called upon to put in a graded rate, certainly we would like to have some intimation as to what the complainants think would be a fair rate to these different points, and what you have to say upon the subject. It may involve further consideration of the case, and probably would.

Mr. Norton: We are not prepared this morning to make answer. We intend to do so before the close of the hearing. I assumed that without any argument from us the Commission would
1740 fix graded rates if they desired. We will give you our answer before the hearing closes.

The Chairman: You will have to proceed to argue it as best you can in the present stage of the case. You will have to divide the time equally. There will be one hour and forty-five minutes for each side.

Mr. Dillard: I think it would not be unfair, if your Honors please, for Mr. Call to let us know what he would prefer, if he is willing to tell us.

Commissioner Prouty: As to the graded rate?

Mr. Dillard: Yes, sir; whether he would prefer a graded rate or a blanket rate. It is not unfair that he should state that, if he would be willing to do so.

Mr. Call: I think I can state our position on the matter very quickly.

The Chairman: Let us proceed with the argument, and you can do that in the course of your argument, can you not?

Mr. Call: Yes, sir; I can do that.

Mr. Norton: I know what he wants, so far as that is concerned.

Mr. Dillard: I know what he said in the former argument.

The Chairman: Let us see if we can not have an understanding as to how we shall proceed as time goes on. I presume you
1741 will want whatever time there is left, and there cannot be more than an hour and forty-five minutes given to each side. You may proceed, Mr. Call.

Argument of Mr. Asa F. Call on Behalf of the Complainants.

Mr. Call: Above all things, if the Commission please, we want an order that will stand the test of the fire of the railroad attorneys in any tribunal to which it may be taken. Whenever there is doubt about a proposition we would like to have that doubt solved against us on any question of law or fact, because the recent history has developed the situation that makes it more difficult for shippers to obtain justice than for some years, and we would like to have this order in an iron-clad way, if we can get it so.

Commissioner Lane: You regard it as being more doubtful as to our power to make a blanket rate than as to our power to make a graded rate, do you not?

Mr. Call: I think so. I want to be perfectly, absolutely candid. I may be wrong, but that is a lawyer's judgment, and a law-
1742 yer is as likely to be wrong as anybody. But I feel this way, that while, under the long and short haul clause of the Act, it is within the power of the Commission to fix a reasonable rate for the long haul and to permit the railroads to apply that rate back into the interior from either way, to a reasonable extent, and while the law only requires the Commission to fix a maximum reasonable rate, which certainly gives more latitude than it would if it required them to fix an absolute reasonable rate, yet there are limitations even upon both of those propositions, and when a rate is fixed to apply from the Atlantic seaboard back as far as Denver, I think there might be room for judges to differ on the question at least whether that is not such a large use of power as to be beyond reason.

I do not think the Supreme Court will interfere with the conclusions of this Commission on any question that will be reasonable, but when the proposition comes to them in such form that it seems to be utterly beyond reason, they are going to say there is the exercise of power not conferred upon the Commission,—that is, there is danger of their saying so. Judge Van Devanter is very strongly inclined to that opinion. He is a very able judge, and that is recog-
nized, in his opinion, that that is such a great exercise of
1743 power that it would be totally unreasonable; and I think there is room to hold so on that very proposition, and we do not want to go up against it in this case.

Unless the railroads will come in here and say they want it, and will promise to this Commission that they will never question it in any court—and while perhaps their promise may not be binding upon other defendants not before this tribunal, yet inasmuch as this Commission has the power to set aside the order any time and doubtless would do so as soon as any question was made upon it upon that ground, and put in a graded rate—it is wholly unlikely any attack would be made upon that ground if the promise is made that it would not be.

1744 So I would not want to ask this Commission to put in a blanket rate unless it was thoroughly understood by all parties before this Commission that there was no objection to it from any source, and that no objection ever would be made against it from any source which would be controlled by the parties here.

As to the desirability of a blanket rate, I would leave that to the superior judgment of the railroads. They are the largest factor in this business. They know whether they want to kill the goose or keep it alive. They know what is best from a traffic standpoint, undoubtedly: and we will join with them in any request they make of this Commission as to the kind of rate they want. The only controversy between us will be over the size of the rate, when fixed.

The Chairman: It is well understood that the Commission did not undertake to put in an original blanket rate before. It only dealt with one that was in.

Mr. Call: That is absolutely true. At the same time, I am afraid, in my own mind, that that is not a complete answer to the legal proposition, because the legal proposition is here that the law requires just one thing of the Commission. After they have de-

1745 termined that the existing rate is unreasonable, it requires them to put in a reasonable rate. If a blanket rate is not reasonable, the practices of the railroads in the past do not make it reasonable. I am afraid that the law will say that the commission is in duty bound to put in a maximum reasonable rate, regardless of all practices or what they found before them when they dealt with the case. I do not say that that is the law, because I do not know; but I am afraid that would be declared to be the law: That there is a duty, under the law, to put in a maximum reasonable rate; that there are more factors and more interests involved in this than the mere interest of the carrier or the mere interest of a shipper. There is a great public interest here, that is entitled to more consideration than the interests of either.

I think the broad language that was put into the law will probably be held by the Supreme Court to have some meaning. I do not believe, however, that the Supreme Court, as they said in the Missouri River rate case, the Rock Island case, will take up a question not presented; and I do not believe they are going to right the equities of people who have not complained, or who do not appear before the Court. I do not believe that they will allow any-

1746 body else to do it for them. *I do not believe that they will allow anybody else to do it for them.* I think they will

take the case as it is presented. If all parties are agreed that that is a desirable situation, I think it will be so accepted, undoubtedly.

Mr. Norton: I want to suggest, Mr. Chairman, that the long time being taken by Mr. Call in failing to answer this simple question be taken out of his hour and a quarter.

The Chairman: He is speaking in the hour and three-quarters, and has been, since he commenced.

Mr. Call: Of course I am.

Mr. Norton: I beg pardon. I did not know whether that was understood.

Mr. Call: Another feature of this matter I want to suggest to the Commission, and that is the legal proposition; under the evidence adduced before you, and which will be adduced before the courts, as to whether the order can be sustained on account of the difference between the orange and the lemon rate. If the rate is left a blanket rate, I am inclined to think it can be justified. If that is the view of the Commission, that there should be a difference, when they come to sum up this case; if the Commission should be of opinion
1747 that there ought to be a difference in these rates, I believe that difference could be justified. I believe there are reasons for justifying the difference. I do not say that I think there should be a difference, but I say that there are reasons which may appeal to the minds of the Commission as being sufficient to justify the difference.

On a graduated rate, however, I do not see how there can be a justification for the difference in the rates, under the evidence that is submitted. The distance on a blanket rate, it seems to me, would justify a part of it, at least, that is, all of the 15 cents, and the heavier loading of lemons ought to justify it, under the theory that this case has been heretofore submitted upon by the carriers, and, I suppose, according to well-accepted theory that the size of the revenue load should have some bearing upon the matter. Those two elements would justify I think, if such was the conclusion of the Commission, a difference in the rates.

Commissioner Prouty: Let me ask you: If the Commission were of opinion that it must put in graded rates on lemons, would it be your thought or desire that we should reconsider what we have said about oranges?

Mr. Call: Although, with regard to the orange rate, our people have such high respect for the judgment of this Commission
1748 that we accept the proposition, for the time being, for such length of time as to the Commission seems right and just, and pay the $1.15 rate, although they feel and have always felt, for a great many years, that they are entitled to the dollar rate; they are willing to abide by the judgment of the Commission. But if this Commission decides to put in a graded rate, then I am well satisfied that that order would have to fail unless the orange rate is reconsidered.

Commissioner Lane: The $1.15 rate on oranges was considered with the dollar rate or the $1.15 rate on lemons, and, at the same time, it was developed that the lemons did not move as far; and that

both rates were blankets; and we justified a $1.15 blanket rate on oranges.

Mr. Call: That is what I would think would be sufficient justification, unless we took into account the larger tonnage of the orange and another view of it, that it is all one thing, and all moves together, and helps make up a train; then the tonnage of the two commodities is not so important.

Some people claim that the greater tonnage of oranges as compared with lemons entitles them to a lower rate, and some claim that the shorter haul of the lemons entitles them to a lower rate. Con-
1749 sidering the way it moves together, almost every day, and in trains together, and to pretty nearly the same destinations, and all that, I do not know that the tonnage is any valid argument for a difference in the rates. And the shorter haul of the lemons is certainly a justification for a lower rate, if we are dealing with a blanket rate.

When we are dealing with a graded rate, if we should be dealing with a graded rate in this case, commencing at the seaboard to fix a reasonable rate to the seaboard, and grading it back, then, by the time we got back to Denver, we have got so much lower a rate on the lemons than we would have on the oranges at that point, that the order would not stand without a reconsideration of the orange rate; and I should want the Commission to reconsider the orange rate, and to so fix these rates as that they will be harmonious and consistent with each other, so that they would not be subject to any legal objection.

I do not believe that any court would say that because they thought there was an error of a few cents, they would set aside an order for that reason; but any great, glaring reason such as the court thought they found in some other cases, might give foundation for an opinion that it was unreasonable. So that, if we have a graded rate,
1750 I would want to ask, and do now ask the Commission to set aside the order in the orange case.

There is another feature of this case that I believe that the carriers should be on record on before we finish the case, and that is whether the refrigerator cars should have a different rate than the ventilator cars, especially under this new equipment. We are going to say here, and I might as well say now, that, representing 90 per cent of these lemon shippers, we now agree that we will load all of those collapsible bunker cars that are furnished to us, with the bunkers collapsed so that we can load them; we will load them from end to end, six wide and two high, which will admit of a load of 408 boxes, and a minimum of 34,000 pounds; and we will consent that the Commission may, in its order, fix that minimum on those cars; and, inasmuch as they have sufficient cars and more to move all the lemons, we feel that the rate should be based upon the proposition that the collapsible bunker car is available and is successful for that purpose and can be used; that the shippers are willing to use the larger load, in order to make safe the lower rate which they demand.

With that situation, or a load of 6,000 pounds more in the venti-

lator cars than in the refrigerator cars, there develops the
1751 law question as to whether the rate should be the same on both.

We are not particular about that. But, unless the carriers shall come before the court and say that they will waive that question, we will ask this Commission to make a different rate on ventilator shipments so loaded than upon refrigerator cars.

Commissioner Lane: Would it not be just as practicable to make a difference between the collapsible bunker car and the regular car as it would be to make a difference on cars of different lengths,—between the 36-foot car and the 40-foot car?

Mr. Call: That would not do us any good.

Commissioner Prouty: If we provided in an order that you should be required to load 35,000 pounds when a collapsible bunker was furnished with the bunkers out, in which you could load, and only be required to load 27,000 pounds when a car with fixed bunkers was furnished, that would take care of the situation, would it not?

Mr. Call: Provided the rates are the same; but I understood Judge Lane to suggest a difference in the rate.

Commissioner Lane: No; simply a difference in the minimum, on the theory that the car was extended in length by reason
1752 of the collapsible bunkers being out.

Mr. Call: That would be entirely satisfactory. I beg pardon. I misunderstood the proposition.

The difference in the earning power of the cars, the way that you load, under the dollar rate, $282.24 for the average load and $342.72 for the collapsible bunker load, makes quite a difference in the earnings of the car, I do not know on what basis Mr. Chambers figures, but I had always supposed that the revenue of a car had something to do with the rate. If that is true, that it should have something to do with the rate, there certainly is justification for a difference in the rate; and when we come to the courts, I wish to say, as I have been before the courts on these cases, that not even President Taft has any higher respect for courts than I have; but they do not deal with this rate question——

Mr. Norton: They will be glad to hear that in California.

Mr. Call: I think I have as high respect for the courts as Brother Norton; but I may not appeal to them quite so often on these rate cases. I have the greatest respect for them.

Mr. Norton: I was referring to your California recall.

1753 Mr. Call: Oh yes. I did not vote for that.

The trouble is, however, when you come before a court with these cases, they will submit the matter to some master to take the testimony; and the master, probably, does not know a thing about it; and he will take a lot of testimony, and a lot of these fellows will come before him, like Peabody, and they will make him swallow anything with regard to the way to make a rate. They will tell him that the gross ton mile is the only way. Then they will add a lot of empty mileage on top of that, and a lot more items that are all Greek to him; and when he gets through, he thinks the thing is

surely confiscation. It looks so on the face of the papers. There is enough red ink on them to show a road in bankruptcy.

When they get before the court, they are going to take some basis of this kind in attempting to show confiscation; and when we come to that question, the larger revenue load will help us, and it will be much harder for Peabody to figure out a loss with that larger revenue load than it will with the smaller revenue load. Therefore, unless the roads get on record here, that they want the same rate on these two styles of shipments, refrigerator and ventilator, we shall not ask for a dollar rate on both.

1754 Commissioner Lane: How far east would a dollar carry you; to the Pittsburg line? How far east would a dollar rate be reasonable?

Mr. Call: To the Atlantic Seaboard, on the ventilator shipments. There is no reason on earth why a dollar rate is not reasonable to the seaboard, on ventilated shipments, the way I look at it. I may be prejudiced by the interest I have in the matter, but, as compared with what they are doing for others, it certainly is reasonable.

If we are going to have a graduated rate, or if we are going to have two rates, one on refrigerator and one on ventilator shipments, then I would consent to the seaboard rate on the refrigerator movement being a dollar-fifteen, and on the ventilator movement a dollar to the Atlantic seaboard on lemons, because there should be a difference. I do not want to ask for less than a dollar to the Atlantic seaboard; that is, $1.15 on a refrigerator movement to the seaboard and $1 on the ventilator movement, unless they say that they will desire to have the rate the same on both shipments. If they do, the percentage of refrigerators is so small that I ask for the dollar rate on all, to the Atlantic seaboard.

As to the New England proposition, while the distance to
1755 the points that were actually hauled is not much greater, that is, Boston—we do not haul east of Boston any lemons; probably not over one car in three years would go east of Boston; it is a paper rate, so far as we are concerned—yet it is an awfully good thing for Peabody to figure on, when it comes to the question of confiscation. He will take that rate down to Portland, Maine, or some place like that, and say: "See how that figures out on the question of the per gross ton mile proposition," adding in the return empty movement from Portland.

Therefore I think that, in fixing the New England rate, those possible long distances, that there should be a difference between that and the ordinary seaboard point, even under a blanket theory; that the test of the blanket proposition is not only whether the blanket, as a proposition, is reasonable or not, but whether the longest haul under that blanket can be justified on the ground of confiscation. While a court has never held on the question of confiscation, that I know of, I think they have distinctly repudiated the proposition that they can include interest on earnings of any kind on a question of confiscation.

The Chairman: On the assumption that the Commission
1756 should as a matter of law, ignore the blanket rate established by the carriers, in making an order, and that it should accept the other proposition, that lemons and oranges are all one product, citrus fruits, to be dealt with as a whole, what, in your judgment, do the facts and circumstances appearing in the case indicate as a reasonable rate to the seaboard, New York, for instance, leaving New England out of the question for the present?

Mr. Call: I think that $1 to New York is a fair rate, and something more to New England. That would be my judgment of it.

Mr. Durbrow: About how much more to New England?

Mr. Call: I think it should be, probably, 10 cents more. I had not got that in mind, exactly. I am not sufficient of an expert to know. I would not presume to say as to what it should be, because I have not experience in those matters to be able to say; but I think it should be more, and whatever additional amount the Commission might feel is reasonable for the haul.

Commissioner Clark: If you could be sure of a dollar as a maximum rate to New York, you would want graded rates, would you not?

1757 Mr. Call: Well, I will leave that to the railroads to say. That is a question that it is more important for them to answer than it is for us. What I do say is this: I want to put the Commission in possession of every possible fact in regard to this business, candidly and frankly; and the situation is this: That it does not make so much difference to the shipper about a reduced rate to western points as might be thought.

The Chairman: To what points?

Mr. Call: When the rate is graded back. That is more a question between the carrier and the consumer.

The shipment of this citrus fruit is under highly competitive conditions. Even in the Exchange, the shippers compete with each other on the same market every day. This exchange is framed with a view of being within the law. The only duty of this exchange is to furnish agents to the various associations, which they may use at will, at various points throughout the United States, and all of them under bond; because we have suffered very large losses in the past, and we are compelled to put them under bond. The only obligation they have is to use these agents that have been provided for them and bonded; and they give their own orders, make their own
1758 prices, select their own destinations, sell when they want to and when they do not, they will not. And the sales are made according to the view of each shipper; and there are about one hundred and seventeen of them in the Exchange. They have different views; they have different grades of fruit.

Therefore, the competition is so strong between each other, and between them and the 40 per cent that are not in the Exchange, that when cars were at Denver, for instance, and offered there at Denver, and there were fifteen or twenty cars there, and only one or two buyers, there would be an auction of those cars, and when the price was made, it would be a priceless freight. We would not

gain anything by it, to speak of. We might gain a nickel for 20 or 25 cents, or 30 cents. We might get that much for the shipper. But it is not a shipper's proposition; and, really, it is not a consumer's proposition, to any great extent; because, if you take 30 dozen lemons, in a particular case, if you grade the rate back 30 cents from the seaboard to Denver, that is only a cent a dozen, and that cent a dozen is lost in the shuffle before the consumer ever sees it. The jobber would not get it. The shipper would not get it. The railroad would not get it. The consumer would not get it. It
1759 would simply go to the retailer's profit; and he takes the most of anybody out of this business.

Our average on the lemons, for the last four or five years, is $2.49. The average price to the jobber is about $3.50; and the average price to the retailer is probably in the neighborhood of $3.75 to $4, on the western market. They make 50 cents a box, and the eastern jobbers make 10 cents a box. The retailer, on an average, will get that box at $4, and sell it all the way from $6 to $10 to the consumer. So that this would make no difference to the consumer at all. It would all be lost in those larger figures that the consumers pay for the product.

So I say we are not fighting on this graded rate proposition, particularly, except from a legal standpoint. We want to make this order legal. I would not fight for a lower rate further back, particularly. What we want is a reasonable rate to the seaboard. Then it can be graded back in such a way as to be legal, without considering our interest at all. Just make it so that no court would have occasion to question it. Whatever the railroads say about that would go a long ways towards convincing us that it is right. Whatever they think is proper, graded back from the seaboard would be
1760 satisfactory to us, provided their rate to the seaboard is right and reasonable.

In this matter what we said before with regard to the needs of the industry, I want to withdraw. I want to stand squarely on the proposition of a traffic rate, or a rate reasonable from a traffic standpoint. I do not want anything better than other people are getting in the way of rates; and if we lose money, that is our fault. We simply want to get a square deal, as reasonable a rate as they are giving others; and we want, in figuring on this, to eliminate all the bogus, and wind and water and bugaboos that the railroads plunge into these cases, and get right down to absolute facts and find out what is an absolutely reasonable rate, and have you give us that rate. Then, whether we live or whether we die, we shall be satisfied with that proposition, if we can have it absolutely reasonable on the basis of what they are doing for others. We do not want them to go out there and see three or four of our best growers making money, and then put on the rate they think the industry will stand. We do not want their judgment on that. We want the judgment of this Commission as to what it will stand.

We have a low priced product. It is not a perishable
1761 product. It moves evenly throughout the year. We load and unload the cars, and we give them a long haul. These are things, we submit, that should be considered.

On the other hand, they have tried to stuff every one of these cases with various elements. They try to put into the case little things, and then magnify them as they go along until they become great snow balls, or soap bubbles, before they get through with the case. They manage, in some way, by manipulation of figures, to make them look very large. For instance, they say that this stuff, because it moves in a refrigerator car, is entitled to bear a much higher rate. But why should it bear a so much higher rate?

1762 These refrigerator cars are a very ordinary proposition. They cost $1348. The record shows that the average of their new equipment of ordinary box cars costs $1054,—only a difference of $300 in the cars. On six per cent basis, that is only $18 a year; and on the basis of five trips, which the record shows in this case they ordinarily make, that is, their average number of trips, it figures out less than four dollars a trip; that is, less than one tenth of one mill on the cost as Peabody has given it here on the revenue cost. That is not such an awful thing to be considered in the making of rates.

Something has been said of the tare weight in these figures, and a question has been raised as to how much of that should be allowed in making a reasonable rate. It must be evident that it should not be controlling, because they make a heavier car. That should not control the question of the increase of rates. If that were so, it is a very simple proposition to raise all their rates. The new steel cars for moving coal, on that basis, would double the coal rates. The new steel box cars, or steel frame box cars they are putting in now, that have a durability several times that of the old wooden frame car, that require much less repairs, much less in up-keep cost, and were put in for that very reason, to save money, would oper-

1763 ate to raise the rates on the basis of figuring the gross mile tonnage as a basis for a rate. That is manifestly wrong, taking it as a sole basis. Perhaps it may be considered to some slight extent.

I apprehend that when a railroad has put in new, improved and heavier cars in the service, it figures on the increased cost of the car on one side, adding to that the increased fuel it takes to move that car over the line on the same side, and on the other side it takes into consideration the less wear and tear and decay, the less liability for destruction, the less injury to the freight it carriers; and when it gets through, it sums up the proposition as to whether it can afford to put in the new or improved cars, or whether it would be better to retain the old.

Mr. Norton: You have entirely omitted the consideration of the larger load.

Mr. Call: The larger load is another item to be taken into consideration.

With this device of the collapsible bunkers, which we are glad to accept for the sake of the decreased rate which it ought to afford, the element of waste space, and the element of extra tare weight are largely eliminated, because when we load it from end to end,

1764 it is simply an ordinary box car. The reason why the tare weight was excessive was because of the bunkers which could

not be loaded. Now it will not vary much in proportion to the ordinary box car. Its load will be 17 tons, and I think their average load is from year to year 18 to 20 tons. Those cars weigh 39,000 pounds, and I think these new steel frame ordinary box cars weigh about the same; so that the increased cost and weight of the refrigerator car, while they are proper elements to be considered, are of very small moment when you come to really see what it means in the rate. It is almost too small to be taken into account.

In this case we have prepared some tabulations showing what the carriers are doing for other commodities. All we ask is that there be no discrimination against lemons, because of the belief of Mr. Chambers that the industry can stand it. I think he is mistaken in that belief. Whether he is or whether he is not, it is not a proper way to make a rate. We are entitled to about the same rates that are being charged on other commodities.

In this table we have made computations on the car mile earnings, the ton mile earnings, the net ton mile earnings, and the gross ton mile earnings; and in our former tables, in former hearing,
1765 we had car mile and train mile earnings; so that it is put up in the various ways in which the carriers might want to have it considered; and it is compared with cantaloupes, celery, tomatoes, cabbage, potatoes, onions, apples, deciduous fruits, beans, and canned goods, being the larger commodities that move from California in the new steel cars. The lemon load would be by far the most profitable load, either from the standpoint of the car load or from the standpoint of the car mile or net ton mile, or the gross ton mile.

The carload would be $342.72. The car mile would be 17.136 cents; the net ton mile is one cent; that is, on the 2,000 mile haul. On the gross ton, it is four mills and a fraction on the smaller load, and four mills and a half and a fraction on the larger load.

On the 3200 mile haul, which is approximately to New York, the ventilator load of lemons would pay, on the net ton mile basis 6.625 mills, and on the gross ton mile basis it would pay 2.819 mills. That is a greater net ton mile earning, and a greater gross ton mile earning than canned goods provide. It is over a mill greater earnings on the net ton mile basis than canned goods provide, or beans. About twenty per cent greater earnings on either basis; and those are carried in box cars. That is allowing for the full weight
1766 of the car that carriers each product.

The value of lemons is much less than that of beans, and very much less than that of canned goods. It is no more perishable than either. I could safely guarantee, I think, that there are no more damage claims collected in the case of lemons than in the other cases. Our percentage of damage claims, as shown here, is too small a fraction to figure. It is only a thousand dollars on seventy per cent of all the lemons for two years, on account of decay; too small to mention. These lemons are practically prepared like dried fruit or canned fruit. It is not a perishable fresh fruit, in the sense that deciduous fruits, cantaloupes, and fresh vegetables are so considered.

Commissioner Lane: There is some water competition on canned stuff and dried fruit to the coast, is there not?

Mr. Call: I do not know about that; I suppose that might be so; will be so in time, probably. That may be so. But that is a proposition that I do not know whether it is right or not—to consider that competition that the carrier has, in every other rate but ours; and then, when we mention competition in our case, to say that as a matter of law it is wrong. That does not seem to me
1767 to be right. The Court has just said it is wrong to consider competition on lemons. Now, why, when the railroads make a voluntary rate for years and years, should they say: "You have got to pay more."

Commissioner Lane: That is a different form of competition. That is a market competition, and the other is carrier competition. One is competition between transportation agencies, and the other is competition between markets.

Mr. Call: I do not know. Is that right? Our main competition comes in on lemons on account of the low rate across the water. If they had to pay our railroad rates across the ocean, we would not bother any about the competition; but the court says we should not consider it.

Mr. Norton: That is not so.

Mr. Call. Did you not argue there, and did you not get the Commerce Court to hold that the Commission's order is invalid because the Commission considered competitive conditions in Sicily? Or where have I been?

Mr. Norton: I refuse to admit it.

Mr. Call: That is the way I understood it.

Now, they suggest that, although they made voluntary rates to get the business on all this great lemon business from Cali-
1768 fornia, for all these years, and did it in order to get the tonnage, and to build up the industries, when we compare our rate with them, they say that is not a comparison, because that is competition. We say ours is competition too. "Yes; but, as a matter of law, you cannot consider that. That is wrong." Consider competitive conditions on cantaloupes, deciduous fruits and everything else that is moved, but do not consider them on lemons.

Mr. Norton: We did consider that.

Mr. Call: You say you did? You will not let anybody else consider it. Do you not claim that you are the only authority on earth that has a right to consider our competitive conditions?

Mr. Norton: We can consider them.

Mr. Call: Do you concede that anybody else on earth can?

Mr. Norton: Yes.

Mr. Call: Who?

Mr. Norton: The Commission.

Mr. Call: You told the Court they could not; and you got the Commerce Court so to hold.

The Chairman: Assuming that that was true, and that that must be eliminated, what reason is there for a difference between
1769 the rate on lemons and oranges, where the distance is the same?

Mr. Call: Where the distance is the same?

The Chairman: Where the distance is the same and if you are correct in your construction of what the Court held with regard to the impropriety of considering foreign competition?

Mr. Call: The only ground left that is tangible and real for making a difference between oranges and lemons is the fact of the greater load that lemons will take. There is a difference in this; that lemons move more evenly throughout the whole year.

Commissioner Lane: You mean the oranges?

Mr. Call: No; the lemons more more evenly. Oranges come in a block of about four months. Most of the oranges move in about four months. The lemons move very evenly throughout the year. The movement is a little heavier in the summer, but only slightly heavier, and it is almost a daily proposition with lemons.

Our first exhibit here shows that lemons moved in this way; November, 281 cars; December, 369; January 422; February 263; March 474; April, 518; May 414; June 795; July 511; August 398;
September 223; October 223. June is the large month
1770 there—it is one-half larger; but otherwise it moves pretty nearly evenly throughout the year.

While oranges move every month during the year, the greater bulk, over half of all the oranges move in four months, February March, April and May.

That more even movement, considering lemons alone, entails a less empty car movement for the return, considering it alone. Of course they have charged us with the empties hauled back for this quick movement of lemons and deciduous fruits, and all those things that come on suddenly, and in such great volume that they have to accumulate empties for them, and in their figuring they have charged that to lemons. Considering lemons alone, however, they move so evenly that it should not entail any empty movement at all.

That is one slight ground. It is not a large consideration, but it is something.

Another reason, as shown by the records here, is that it does not need such quick transportation. Lemons will keep longer. They do not require such quick time on the road as oranges. They are a day longer in being delivered, and they will be a day longer on the
way, or two or three days longer on the way. Or, as Mr. Mor-
1771 tensen said, if anything should happen to a car, a derailment of a train, or anything of that kind, entailing the loss of a day or several days' time, it would mean ruining the perishable article, whereas lemons would not be injured. Lemons are a cured fruit, which remain in the house until the rind gets good and solid, almost like a kid glove, so that they will keep almost indefinitely, and are not perishable in the sense that other fruits are perishable. That is a slight reason.

Mr. Norton: Still it has to be ventilated pretty carefully in shipment?

Mr. Call: Not so carefully as oranges do. They often go through without any ventilation at all, or any ice; are just closed right up and go through. A great many of them move in that way.

Another reason is that while you have held that the carrying of

the ice in a refrigerator car properly inheres in the refrigerator car and is a part of it, there is a great deal that must be considered in connection with the expense of a refrigerator car which is not connected with the ventilator car; for instance, that the cars have to be iced so frequently that they must be taken to the side track upon which the icing station is, and there loaded. There is also
1772 testimony in the case that the refrigeration costs money; that the car has to be cleaned, and all that, and that there is a little more expense, perhaps, in repairs and the ice injures the car a little, and makes more repairs necessary. There are some considerations there tending to show that a refrigerator car does cost somewhat more to the carrier as a carrier than a ventilator car.

The other consideration, however, is this: That if we are going to apply the same rate to both classes of shipments, both ventilator and refrigerator, the lemons are only 14 per cent, or less iced, and the oranges are 50 to 55 per cent iced. Therefore, in 86 cars out of a hundred the lemons can be loaded from end to end, and only 45 out of a hundred of oranges can be loaded from end to end. That is, the average load of lemons in these collapsible cars will be much greater than the average load of oranges that goes into these collapsible bunker cars. That would justify a difference in the rate under the blanket rate, if we used the same rate for refrigerator and for ventilator cars. I do not know whether those considerations are sufficient to justify 15 cents difference or not, but I think, to the minds of a great many men, it would be sufficient. Whether it was
1773 sufficient or whether it was not sufficient, they are sufficient to justify the Commission in any conclusion it may come to in regard to these two fruits, in my opinion, with which no court would interfere. They are sufficient justification for an opinion so that no court could say there were no grounds for the distinction.

When we come to the question, however, if we should graduate this rate back to the seaboard, and we should make a difference between ventilator and refrigerator cars, then, in that case, I do not think there is any ground to stand on for a distinction between the two of sufficient moment to justify any great difference in the rate graduated back.

The Santa Fe has made comparisons on this transportation. They have shown, in here, the cost of a revenue ton mile on their road to be 6.6 mills, or about that on all freight; and in making up that item, they have taken into account all empty movement, of course.

The empty movement on ordinary box cars, or upon all cars, is about fifty per cent. It is shown in the record here that about half of all car movement on the Santa Fe is empty movement; while all movement on the refrigerator cars is 31 per cent empty movement. Therefore, the empty movement on refrigerator cars is much less than it is upon the entire movement.

1774 That being so, when he has included in this cost all empty movement, he has included in that all or more than should be included on account of the empty movement of the refrigerator cars. There is nothing to be added. All their expense, everything, including all company freight, moving in freight cars, added to the

cost of freight, makes only six and a fraction mills; while their proportion of the New York haul on this fruit is seven and a half mills on the dollar rate. They get 75 per cent.

So that, on their own showing here, the New York haul is a profitable haul, as compared with the average of all freight and compared with the cost of all freight.

There is no one, it seems to me, that is not engaged actively in the railroad business, who can say that the cost of moving a car 2,000 miles is the same as the cost of a car of all freight a distance of 347 miles; that they can assemble a train six times without any cost; that they can distribute a train six times without any more cost; that they can handle the less than carload, the short hauls, as cheap as they can this long haul of 2,000 miles. It seems to me so preposterous that not even a court could consider it as a fact.

1775 But, taking that as a fact, that it is the same, yet it shows a profit on the New York haul, and it is a profit over their average cost of all tonnage; for their percentage is seventy-five per cent, or seven and a half mills.

Therefore I think I can claim this: That, as compared with other California commodities moving in like equipment, as compared with other California commodities of much greater value moving in box cars, as compared with the cost of all freight, lemons to the Atlantic seaboard at a dollar are a profitable load, constitute profitable business, and the dollar rate is as high as the conditions warrant.

I believe that is all I care to say at this time.

Mr. Norton: In that table you read over at first, you left all your equipment in the east. You did not haul that back, the way we have to haul it, in practical operation. You would get a congestion there.

Mr. Call: I left it on all the same. They are all figured on the same basis.

The Chairman: Forty-five minutes remain for the complainant to occupy in argument. The time for our usual recess has arrived.

1776 Mr. Durbrow: May I ask the Commission if we may have an extension of fifteen or twenty days to file our brief in reply to the first brief that has been sent in the Maricopa cases? That brief was served upon me about 15 days before I left home, and, because of this engagement here, it will be extremely difficult for me to have the brief on file here by December 2nd.

As Mr. Commissioner Lane knows, there are several briefs to follow this particular brief. The briefs relating, as they do, to differnet subjects:

Commissioner Lane: To what subject does this brief relate?

Mr. Durbrow: I do not know, your Honor. I think it is on canned milk alone. And, as I understand the cases are to be submitted and finally determined together——

Commissioner Lane: No; that is not so.

Mr. Durbrow: I had that idea.

Commissioner Lane: There was no understanding at the hearing to that effect.

Mr. Durbrow: I understood, if your Honor please, that we were to

have the privilege of arguing those cases to the Commission, and I assumed that there would be one argument, particularly as all parties interested will have to come from such a great distance. That was the reason I had the impression that the cases would be sub-
1777 mitted at one time, and that no hardship would result——

Commissioner Lane: I do not think you made a request for oral argument, did you, Mr. Durbrow?

Mr. Durbrow: Yes, your Honor.

The Chairman: Your suggestion will be considered, and you may confer with Commissioner Lane about it.

(Whereupon, at 12:30 o'clock p. m., the Commission took a recess until 2 o'clock p. m.)

1778 After Recess.

THURSDAY, *November* 16, 1911—Two o'clock p. m.

The Chairman: You may proceed, Mr. Norton.

Argument of Mr. T. J. Norton, on Behalf of the Defendants.

Mr. Norton: Gentlemen of the Commission, in view of the interest which you have manifested in this case from the beginning of this hearing, the whole membership of the Commission sitting, I purpose, for the information of the newer members of the Commission and other members who have not been in such close personal contact with the subject, to make a hurried and brief, but still, I hope, comprehensive review of the citrus fruit conditions which have been dealt with in this southern California country for a long number of years.

I intend in my argument to deal only with facts. This is a case primarily and essentially on the facts. There is very little law in it, and even if it contained a great deal of law, I should still follow the custom I always do of dealing with the facts. If I have
1779 the facts in the case I am willing to let my adversary have the law and I make it a rule not to try any case in which I do not have the facts and moralities with us. The statement which I am about to make to you is for the purpose of expressing the belief which is deep set in my mind that there is but one side to the case, and that all of the moralities and equities of it are with us.

September 1, 1885, there was put in the first tariff a citrus fruit rate out of California of $1.25, with a minimum of 20,000 pounds.

In 1886, the following year, according to a finding of the Commission in the original Consolidated Forwarding case, the first litigation on this subject, there were a few hundred cars of all kinds of citrus fruits moving out of southern California. Four years after that there were 5,000 carloads, in 1890.

On March 8, 1894, this first minimum of 20,000 pounds was increased to 24,000 pounds. In 1898 there were 15,000 carloads of both kinds of fruit or the three kinds, really, oranges, lemons and

grape fruit, and I presume some tangerines at that time, all called citrus fruit, moving out of that country.

1780 On December 2, 1902,—and up to this time notice the rate on all the fruit had been $1.25 per 100 pounds—upon the representations of the shippers that the lemons could not move at $1.25 and that to meet the competition of the foreign lemons in the markets fed by the port of New York, it was necessary that a rate of $1 on lemons be put in, that rate was finally put in. The proposition was contested or discussed for some length of time, and finally our company yielded to the request although believing it was not necessary and that the trouble with the lemon industry was not a freight rate question.

Mr. Chambers, whom you heard this morning, after taking the matter up with his superior in Chicago, who took it up with President Ripley, was told to put in the rate of $1 for a few years. It appeared from the testimony in the case that he said if they had this $1 rate for five years, they would conquer the Eastern part of the United States and the bulk of the business would so develop that it would be a good thing for us to do.

As an insight next to prophetic in this situation, which is characteristic of the man, I will read to you the letter by which President Ripley finally told our people to put in this rate. This was on the 13th of September, 1904. He said:

1781 "I return the enclosures received with your letter of the 8th instant, regarding the California lemon industry."

This was addressed to Freight Traffic Manager Biddle.

"I do not believe that the future success of this industry is dependent alone upon the rates which the transportation companies make. I have heretofore consented to a reduction in the rate as an experiment for the purpose, if possible, of demonstrating the question. I have heretofore consented"——

This related to the fact that in 1902 this $1 rate was put in on lemons for the shipping season.

On June 1, 1903, the $1.25 rate went back. Then again in the fall they asked for the $1 rate during the shipping season, and it was designated in the tariff as a winter relief rate. On June 15, 1904, the $1.25 rate went back again, and on November 4, 1904, after having put it in and taken it out twice, they put it in and published it for all the year round. It is that temporary tariff to which he refers here in this letter. He proceeds further:

"I have heretofore consented to a reduction in the rate as an experiment for the purpose, if possible, of demonstrating the question. I note the statement that during the past year, under the reduced rate, the trade has done better, but I do not believe that it
1782 has as yet been demonstrated, nor is there anything in the papers to show that the reduced rate is responsible for improvement in the business.

"California ought to produce sufficient of this fruit to meet the

entire demand of our country, but the producer must find some way to preserve the product in storage, so that it may be put upon the market in prime condition during the months of greatest demand, which are the warm summer months in the East. Unless this is done, I do not believe we can save the industry. On the other hand, we should avoid doing anything at this time which would discourage the growers and cause them to give up the fight, and certainly if by making a reduced rate for a few years to come, we can encourage them to increase their output, thus adding its stimulus to closer study and possible solution of the question, we should make the rate.

"The matter is one of large importance to the transportation companies, and I have always felt that some practical way would be found to make a success of it. I shall endorse any arrangement which you and your associates and representatives of the Southern Pacific may agree to as desirable, but I can see no necessity
1783 for the 75-cent rate to New York, and it is altogether too low."

They wanted a $1 rate to Chicago and 75 cents into New York for foreign markets.

So in 1904 this rate was put in all the year round. As Mr. Ripley says, it was then understood it was to be for a few years to come.

We showed pointblank at the trial of this case, by the testimony of the witnesses, that it was the understanding, when this reduction was made that when the disabilities under which these people suffered should pass away, the lemon rates should be restored to a parity with the orange rate. It appears in the record that when they applied for a $1 rate, no man ever dreamt of saying there was any reason in the world why the lemon rate should be less than the orange rate, except the conditions which have been discussed in that letter. But as a transportation matter it was never suggested there ought to be any difference between the rates. You will recall their traffic manager here, Mr. Mortensen, admitted, as he did before, that the service which was performed is exactly the same.

While this $1 rate was in existence, during the very heavy crop of oranges, on February 11, 1905, they came and said the rate of $1.25 on oranges, which had previously been on lemons, was pretty
1784 stiff, in view of the enormous bulk they had to throw upon the market in that year.

After discussion, therefore, the carriers voluntarily put down the rate on oranges of $1.25 to the present rate of $1.15.

Previously, there had been some litigation about the $1.15 rate, which it is not necessary to refer to here. But this reduction from $1.25 to $1.15 was a voluntary reduction upon the proposition of the shippers and growers, just as this rate on lemons by President Ripley was in answer to the same thing, and both these transactions show how we make the rate according to what the traffic ought properly to bear.

On November 2, 1906, Mr. Woodford, the general manager of this fruit organization which is the leader in this litigation, wrote

a letter to our traffic manager in Los Angeles, which we have put in the record, asking him not to put back this lemon rate to a parity with the orange rate for the present. I call your attention to this date, November 2, 1906, because it is about three years before August, 1909, when Congress put an additional protective tariff against the foreign lemon.

It appeared, when we undertook to publish these tariffs, and it is stated in the complaint that was filed before the Interstate
1785 Commerce Commission, that this increase was an outrage and was intended to gobble up, if I may use a classical expression, a part of the protection which Congress was giving to this home industry.

Prior to August, 1909, there had been a rate of $1 a hundred on lemons against foreign lemons. It was at that time increased to $1.06 and I call your attention, as I say, to this letter of November 2, 1906, as illustrating that the manager of this citrus fruit business had it in his noddle that this rate was to go back, and that he knew about it.

I should mention that they did not put on men of such capacity as Mr. Storey. The man who dealt on this matter and with whom the understanding was had when the rate went down that it would some day go back, did not appear to controvert the positive testimony of Mr. Chambers upon this point, and the little evidence we were able to show by correspondence.

On February 26, 1907——

Mr. Call (interposing): I think Mr. Chambers refused to name anybody he had that dealing with, so we could not put them on.

Mr. Norton: I think your own men know the business. Mr. Chambers did not want to name them if they did not want to be named.

1786 On June 16, 1907, still two years before this tariff was granted by Congress, Mr. Ripley wrote to Mr. Storey, in answer to an inquiry by Mr. Storey about how these rates were going to be, that we had many rates too low and that among the first rates to go up would be the citrus fruit rates.

On August 1, 1907, a letter was written by Mr. Frazer, another manager of one of these departments—I cannot recall just which one now, but it does not matter. On August 1, 1907, he wrote a letter to Mr. Chambers which stated this, as shown on page 17 of our brief:

"I wish to inquire of you what the attitude of the railroads is likely to be with reference to continuing the present freight rate on lemons."

The man who propounded that inquiry did not believe, when we put the rate down to one dollar, that we did so with the understanding that it should always be one dollar or that we considered it reasonable. I have shown from this record here that the rate went down with the understanding it would go back to $1.25, whereas we had thought to put it back only to $1.15, the rate on oranges having in the meanwhile gone down.

On November 15, 1909, and on December 6, 1909, two
1787 tariffs were to take effect, one covering part of the northern region and the other covering somewhat south. I do not remember just what part of the country each tariff covered, but it does not matter. There were two tariffs which were to increase the rate on lemons to $1.15. This tariff was attacked by the parties here, in the United States Circuit Court for the southern district of California, which granted them an injunction warning us or forbidding us from charging the advanced rate. This has been subsequently reversed by the Circuit Court of Appeals for that circuit. This injunction applied only to the parties in the case. There were a good many shippers of lemons who were not in that litigation, so that the tariffs took effect and have still been in effect and are now in effect at $1.15 as to all such persons.

The tariff is in effect also into the southeastern part of the United States by adding the local into that country. That is to say, in the Southeastern territory they never have participated in the joint tariffs. The California fruit into the Southeastern part of the United States has to pay a local rate into that region in addition to the rate which we charge.

In 1893 and 1894 there were 5,100 carloads of oranges and 500 carloads of lemons. In 1908 and 1909 there were 31,940
1788 carloads of oranges and 6,150 carloads of lemons. There was an increase from 500 in 1893-4 to over 6,000 in 1908-9.

On October 6, 1890, a protective tariff was laid by Congress against foreign lemons of $1.50 per 100. On July 24, 1897, seven years afterwards, that protection was set down to $1. On August 5, 1909, the old protection was given back and the rate of the barrier was increased to $1.70.

I mention these considerations to give to you, as I say, a correct view of the history of this trouble, and to let you understand why we are charging all the traffic can reasonably bear or why we seek to charge all it ought to bear.

In addition to the proposition which I shall discuss a little later, that the rate on lemons should be, for all reasons, the same as the rate on oranges, I want to call your attention to the fact that, as you have seen, this rate of $1.15 is a blanket rate covering all parts east of the Rocky Mountains, even up into Canada, going as far as Quebec, and all of the map except that southeastern part of the United States.

The Florida lemon has not at its service and the Florida
1789 orange has not at its service any blanket tariff such as that.

Just before this case came on for hearing, as I recall the time, before the Commission the last time, it had decided a Florida citrus fruit case which we deal with in our brief. The gist of that complaint—and it was set out in language unequivocal and strong—was that the rate which the people in California were getting on citrus fruits was crushing them out and by comparison was lower and better, and unreasonably so, than the rate which they had themselves. I take it that the Commission accepted that as true. We thought it was. We think the rate which we give is the lowest of all rates. I take it the Commission accepted that as true, because it

gave to the Florida people a reduction to enable them to get further into the West then they had gone before. But notwithstanding that, they have not the diversion privileges, they have not the blanket privileges, and they have not in my opinion the service which we give to these people for this rate.

I have called your attention, and will not take further time here to mention, to the speed with which this business is handled. We think it is the best service, both as to speed and as to refrigeration treatment, that is to be found in the United States.

1790 I want to call your attention for just a moment to the diversion question, because one of the Commissioners asked a question about that subject yesterday. In the brief which we filed and which I am going to ask each one of you to read, if you will—that is to say, that part of it which deals with the lemon question—we have covered all these matters fully. When this case was begun, they asked for a reduction of the orange rate from $1.17 to some rate that might be fixed by the Commission. Secondly, they asked that the lemon rate be fixed at $1. Third, they asked that our grossly extortionate and indefensible refrigeration charge be cut down to nothing or wiped out altogether. When it came to the proof, the robbery which we had been accused of practicing under cover of the refrigeration charge was upheld by the Commission, and we showed by comparison that the icing which we did and the service which we rendered was cheaper than services which had been approved by this body elsewhere. Those three things were attacked.

In this first brief we dealt with the orange rate and the lemon rate and the icing rate, and there is a complete index in it, so that if you will take my brief, dated May 7, 1910, and turn to the

1791 index, you will find everything there is about the lemon question and you will not need to waste any time on either the icing subject or the orange subject.

On the question of diversion I want to call your attention to the fact that our Exhibit No. 5, shown at page 671 of the record made at that time, for the year ending October 30, 1909, shows there were 4,081 lemon cars moved by the Santa Fe, on which there were 1,016 diversions of cars before they reached the billed station. That is the question put by one of the Commissioners yesterday. 990 were diversions after they reached the billed destination. This makes a total of 2,006 diversions on lemons, 608 cars having been diverted once before reaching billed destination, 280 cars twice, 96 cars three times, and 32 cars four times; while 626 lemon cars were diverted once after reaching the billed destination, 256 cars twice, 87 cars were diverted three times, 16 cars were diverted four times, and 5 cars were diverted five times.

As I pointed out to you yesterday, some of these diversions involved a back haul. Each diversion, if it is necessary, is entitled to 48 hours free time.

I might mention that in the inception of this business it was the practice of the shipper to start out the car without actually

1792 knowing its ultimate destination, because we haul through a long desert country there. The southern part of California,

all of Arizona, New Mexico and part of Colorado, are really a desert region. No market for the product is to be found there, and they therefore started the practice of sending out tramp cars, billed to Kansas City or Chicago, and while the car was in transit over this unprofitable region, they skirmished through the East for a market, and then on telegraphic orders, handled by us without charge, diverted those cars. I should call your attention to the estimated cost of that telegraphic service at Western Union tolls in the course of a year, which is something enormous.

We would divert that car from its destination at Chicago, for instance, and might send it down into Oklahoma or even into Texas. Reaching there, it fails to find a market; the price is not so good as was expected. We give it a back haul, and then take it on to Chicago, where it was originally billed. Getting to Chicago, at which point or to which point we have all the earnings ourselves on that shipment, they find the market at Chicago is not so good, and then we send it down to Cincinnati, for instance.

Commissioner Lane: Do I understand that you take a car
1793 from Kansas City down to Texas and then back up to Chicago on the $1 rate?

Mr. Norton: Yes. We take them up to Denver. That has been done repeatedly. If the Denver market does not meet expectations, the car is taken somewhere else.

Commissioner Prouty: That is provided by your tariff in order that you may secure the haul of that car which you think would go by some other route if you did not do that?

Mr. Call: And that is against the objection of the shipper every time you do it, when you send it down to Texas and back again. We do not want you to do that.

Mr. Norton: In stating Texas, I think possibly I should have said Oklahoma. Perhaps I put it too far south in saying Texas.

That is very true, but this original scheme was not put in for the purpose of saving the haul. It was for the purpose of allowing the peddling of this business.

Commissioner Prouty: We understand the diversion principle.

Mr. Norton: Of course these two back-haul illustrations which I give are perhaps exaggerated and uncommon; but necessarily, even in instances where we could turn over the car to some other carrier, we might have some back haul.

1794 Cutting all that out, I want you to understand fully how these tramp cars, as they are called, are handled, and what this service must be worth to these people.

In the Consolidation Forwarding case, which I mentioned a while ago, the Commission said we were entitled to a rate of $1.25 to Chicago or to this blanket territory if we would give an eight-day service, if we would give our time-card service. We are giving better service now than was dreamt of at that time. I do not mean by that to say we ought to have $1.25 for the service now. We have rebuilt the railroad and have better locomotives and render them better service, and I mention it to show this improvement of the service at a lower rate certainly ought to be of great value to these people.

At the last hearing it was admitted they had no complaint whatever to make about our service.

On page 61 of the brief——

Mr. Call (interposing): What we said about that was that our fruit, not being perishable, did not suffer from the service you rendered, but we did not concede it was a fast service entitling you to extra pay.

Mr. Norton: I am sorry; I thought you were fair enough to admit the facts.

Mr. Call: We said your service was fair service for our
1795 industry.

Mr. Norton: Oranges are perishable.

Mr. Call: Not on eight-day service. We do not concede it was a fast service, but about ten or eleven miles an hour.

Mr. Norton: I spoke hurriedly yesterday about the free assembling which is done in southern California as against the situation in Florida, where the Commission fixed a rate which we think, by comparison, justifies the rate which we are asking here.

Taking up the report of the change of conditions that has come about since we have had the understanding with these people that when we put the rate on lemons down to $1, it would go back some day to a parity with the rate on oranges, I want to call your attention to the subject of decay. As Mr. Ripley said in his letter, granting this permission to put in this rate, he did not believe that was the trouble with the shippers. It happened that the Pomological Bureau of the Department of Agriculture sent out, at the request of these people, a man to look into the subject of citrus fruits, and he is now here, in their service, Professor Powell, and after looking into that
he just about at this juncture made a report finding that the
1796 enormous amount of decay and loss in transit, which we had
been paying for and for which we had been sued, and for which we had been held responsible in all sorts of conditions, was needless and was due to bad handling. So they were given the advice that this fruit must be handled like eggs.

Mr. Call: He never made any report on that or any investigation.

Mr. Norton: Yes; I beg your pardon.

Mr. Call: He is here; ask him.

Mr. Norton: I do not know that he did, but the Department did.

Mr. Call: No, they did not. Their investigations were confined to oranges.

Mr. Norton: That statement was made before the hearing, and I put in an exhibit with reference to the matter. I do not make any statements that are not in the record.

In the exhibit, which was marked "Powell C," page 360, of the record, he said:

"The handling of the lemon in the packing house is done with more care than is bestowed upon any other orchard fruit crop. The
shippers have found from costly experience that the drop-
1797 ping of the fruit or the rough handling of it in any other
way is followed by heavy losses from decay. The injunction to handle the fruit like eggs is kept constantly before the laborers,

and this care in handling is constantly practiced in well-managed packing houses."

That has reference to lemons.

Mr. Call: He never made any investigation of lemons or any report.

Mr. Norton: I do not think Mr. Powell was talking without information.

Mr. Call: He was simply stating the condition of lemons as compared with oranges, which he was investigating.

Mr. Norton: That is in the record. It is "Powell, Exhibit No. C," at page 300 of the record. His name is on it, and he is responsible for it.

So this decay has entirely passed away, and as suggested to one of the witnesses yesterday, it has been coming back somewhat through careless handling, but it will disappear again.

Another change of conditions since this rate was put in has been in the improved lemon. We brought out from the shippers themselves that by high cultivation and by abundant fertilizing,
1798 by the application of scientific methods, they have made a better lemon than they had to start with. Therefore, it can compete with the European lemon. It appeared also that a chemical analysis had been made and it was shown that this lemon has more citric acid than the foreign lemon. In a general way, the lemon has so improved that the product is more valuable than it was before, and if there is anything in the value of the product which we handle, then it ought to take a higher rate than the orange, in reality.

Our witness from New York testified yesterday this is a higher priced product than the orange, and a higher priced product than the foreign lemon. If we haul sand at a low rate because it is a poor product, and haul copper at a high rate because it is a valuable product, why should not the same principle be applied here? That is one of the considerations in fixing a rate—that since we put this rate down, they have made a better product and it can stand the price.

Another change or improvement is in their improved handling, which I have just mentioned. They ought to learn how to take care of this fruit. They have done that. One witness testified that whereas his fruit had as high as 50 per cent decay, now it had none.

1799 Another change of condition is the improved marketing. I call your attention to, at page 29 of my brief, where Manager Woodford said, in his report for 1908 to the directors of this company, the California Fruit Growers' Exchange, that in the four years from 1904-5 to 1907-8 there was received 53 cents per box more for every box of fruit shipped than had been received for the fruit marketed in the four preceding years.

Instead of running two cars into a one-car town, they have the map spread before them now, and place cars where there is requirement. Some people say they do that to the extent they are a trust, but I think it only a legitimate and proper means of disposing of

the fruit. That condition or organization has come up since the time that three men would put cars into the same town in competition with one another.

Another change in condition is the improved carrier service, with which I have already dealt.

Another condition is the change of the Italian competition, the decline in the Italian competition. That has been shown by one of the exhibits which we have put in showing the relative falling off of the foreign product. In addition to that, Mr. Robin-
1800 son testified that right in the port where this foreign product comes, the California product commands all the year 75 cents a box on the average more than the foreign lemon—that is, when it can be found there. It is stated in the complaint they have about 40 per cent of the needs of the United States. They cannot get across the map all the year around. They have not the goods in the summer time to get across this warm country and into the south, but so long as they can get that far, so long as they have anything to pass by the even better prices in the west, then they can get into New York and beat the foreign lemon there.

Commissioner Lane: I thought the testimony on that proposition was that they got into New York only when the Sicilian lemon did not get there?

Mr. Norton: There was some statement to that effect, but we put in the figures. They did show that; I think they did.

Mr. Call: Does not the evidence now show before this Commission that all lemons sold in that competitive territory are sold for less than the cost of production on the average?

Mr. Norton: Oh no.

Mr. Call: Is not that the record?

Mr. Norton: I will answer that by asking a question. If that is true, why have they 400,000 non-bearing lemon trees in
1801 California now, according to the census of last year? That means that within the last three years they have put out a little short of 400,000 lemon trees. If you are not doing business at a profit, why did you do that?

Mr. Call: If you are not doing business at a profit, why do you want the business to New York?

Mr. Norton: I am limited in my time.

Before this case came on, I called for a statement from these people, to get their annual report, to show to you whether they could reasonably bear the rate which we want to put on. They have not responded. I tried to get it in California. They bring in some matter here and hand it to me just as the case is called. I have turned it over to the auditor, and he says he cannot get head or tail out of it, and of course that was the intention.

Mr. Call: I gave what you asked for.

Mr. Norton: I asked for the annual report of the companies to the constituent membership of these exchanges for a few years last past, and he says they are not there. They were not produced in California, and the Commission has not required them to be produced.

As to the matter of the prosperity of this industry, I want
1802 to call your attention to pages 43-46 of my brief. We have to prove those things collaterally which might be proved directly if they would bring in the matter as we bring in ours. They can tell you what this business is doing, and I think I can.

Mr. Call: What do you want, more than I have furnished you?

Mr. Norton: Nothing now. We are through with that.

Mr. Call: I will furnish you anything I have.

Mr. Norton: Complainants themselves say in 1907 there were shipped 1,097,000 boxes of lemons; in 1908, 1,585,000, and in 1909 it increased to 2,000,000 boxes, while in the past four years about 3000 acres of land have been planted to lemon trees. This was back in the spring of 1910.

Mr. Chase, of Riverside, has now 200 acres of young lemon trees, and he testified that two years ago he converted 100 acres of orange trees into lemon trees by budding. He is one of the largest growers of fruit in California. Does not that show this is a better product and ought to carry, if we are to measure up by its value, a higher rate than the orange carries, a higher rate, if anything. It sells for more in New York. It carries a lighter load than the orange.

In 1907-8 this business amounted to 3,000 carloads. In
1803 1909 it had 6,000 carloads, a very healthy infant industry, indeed, and we gave it protection, too, when the United States Government did not.

Then when the protective tariff was put on, we were accused of having taken part of it. Even if that were true, which I do not admit at all—but assuming it for the sake of the argument, when they were told practically by the Government to go to pot and came to us for protection, we gave it. Now when they get a protection of 50 cents and we take 15 cents of it, that ought to be fair, even if our purpose were as malicious as they think. I have shown you that three years before this tariff was in effect, we were discussing with them the restoration of this rate to a parity which it was understood when it was reduced it would some time have.

Another change of condition which I want to mention as I hurry along is that previous to 1906 the ships coming in and the eastern carriers handling these foreign lemons were under no restriction with regard to rebates. The rates on lemons from the Atlantic seaboard into the interior were such that nobody knew what they were, but after 1906 that situation became stable. That was one of the considerations that they put up to our people. They did not
1804 know then what rate they had to meet. Since 1906 they have known. That is another change of condition that entitles us to this consideration.

It appears on page 922 of the record that my friend Mr. Call stated before the Congressional Tariff Commission that the carriers had come to the rescue of the lemon industry as much as they could, and they had put the rate pretty close down to bed rock. Now he seeks to sneer at Mr. Peabody's figures because they show just what he said there.

I have called your attention to Mr. Mortensen's admission that

the service which we render to the lemon is exactly the same as that which we render to the orange. Nobody has ever raised any question about that. Mr. Teague, one of the growers out there, testified at page 493 of the record that his lemons would bear the rate that the orange takes, and yield dividends.

Mr. Phillips of the Citrus Union said, at page 682 of the record, that he knew of no reason why there should be a difference between the orange rate and the lemon rate.

Under these rates we have shown by Mr. Teague, General Manager of the Limoniera Company, which has select markets throughout the United States, because of the quality of its fruit, that it costs $900 to make a bearing acre. I think it is fairly proven
1805 in this record that when a man spends $900 to make a bearing acre of lemons, he can capitalize it at from $2,300 to $3,000 more an acre and get 6 per cent on that capitalization. There are some figures in this brief to which I call your attention. People who can take $900 and capitalize it even at $2,000 and make 6 per cent on it have no license to talk about water in railroad securities.

I have called your attention to the higher prices of the lemon, the greater value of the commodity, and therefore it ought in reality to take a higher rate than the orange.

Respecting the computations which have been produced here, I wish you would look at those, not only those introduced at this time, but also the previous book of exhibits which we put in. The last ones were intended to illuminate some matters which we could not deal with in the other hearing, and to meet some criticism made subsequently by opposing counsel in their brief, to which we had no reply.

In these statements which have been introduced we have endeavored, as far as ingenuity and ability and money and diligence have permitted us, to get at the truth about the cost of handling any kind of business. Perhaps we do not reach the truth. We think
1806 we have not entirely reached it yet, but we are going to study it until we get nearer to it, as we have gotten nearer, much nearer, than we did in the past. The Commission is seeking, through the channel of its statisticians, to get at the absolute truth. People who do that are infinitely better to be respected as to their opinions than some destructive critic who has nothing better to present to you than a sneer. The constructive critic who can give something better is as rare almost as the Dodo bird. But we are endeavoring to furnish you, fairly and squarely, the best light that can be thrown by our little candle.

The method of computation which Mr. Peabody has employed has been tentatively, and in some instances unequivocally approved by the courts. I think in the western rate case this Commission said this method of computation would come perhaps within 5 per cent of being accurate. We will give you that 5 per cent and still, on this showing, we are not getting what we ought to have on lemons.

These figures are presented—and of course this is in connection

with Mr. Chambers' testimony,—not to show you how we make rates, because the rates in this country have been made upon what the traffic will bear or what it could bear. But the making of rates by men who have the permission of the law to do that, and
1807 the making of rates by you who cannot go below a reasonable rate, are quite different; and we present these figures, not to show how Mr. Chambers makes rates, but to show the boundary beyond which you cannot legally go.

The figures are the best, as I say, that we have been able yet to work out with all our industry; and my opinion is, and the very able accountant in the Western rate case told me, that until recent years the commercial concerns of this country had not the means of getting at these facts that the railroads had; that is to say, we can tell what we undertake to tell just as nearly, in my opinion, as the man, who made the clothing on your backs can tell what that ought to cost. I think we can come closer to that. He expresses that opinion, that it is only in recent years that anybody else has come anywhere near us in keeping this sort of a record.

I have taken the time to comment upon this parenthetically because I get tired once in a while of having sneers when we want, as I said, another candle in the room. That is what we are looking for.

Coming now to the question of average haul which was discussed during the giving of the testimony, Mr. Mortensen says there is no difference in the service. Mr. Chambers says there is
1808 no difference in the service and ought not to be any difference in the rate. The question was put by some of the Commissioners as to whether, if this lemon haul was 500 miles less on the average, it ought not to take a lesser rate. I said during the trial no, because this is a blanket situation, and because also it was brought out that they want to get to New York. It is not that short distance they are after. It is New York they want. While the western market is lapping up their product as the desert sun takes up the water, still it is New York they are after. That is where the lemon competition is felt, and that is where they meet the enemy which they are seeking to drive off of this continent, just as we helped them put off the orange.

It is admitted by one of the Commissioners in the Consolidating Forwarding case that we had driven the foreign orange from this continent. So, even if it does on the average move less than the distance traveled by the orange, it is because the western demand has consumed their product, which, at the beginning of this litigation, was only 40 per cent of the necessities of the United States, while today it is 56 per cent—that is, this straggling, struggling industry has grown to 56 per cent, and we have gone away
1809 beyond for our market.

Aside from that consideration that it is the long haul they want and not the short one—and that is the thing that gives them life—I call your attention to the fact brought out in the previous hearing of this case that the English market wants a great big orange. We have not only cleaned this continent, but we have put these California lemons on the continent of Europe, and they have an

agency in London. It was brought out in the former hearing of this case that the English want a great big orange. The American trade will not have it. All of the abnormally big fruit which they grow is sent to London. All of that sort of orange travels the entire distance across the map. If, according to a question some of you have put to me, the lemon, because it travels on an average less than the orange, ought to take a lesser rate, then it seems to me the orange to London, which travels a greater distance than any other kind of an orange, ought to have some distinction made as to it.

There is still another variety of orange which goes into the southeast a shorter distance. If all of the oranges of that kind traveled a lesser distance than the big orange which goes to London,
1810 then will you make a distinction as to the rate which ought to be applied to the orange going to the southeast?

If you make a distinction between the lemon and the orange, why should you not make it as to these others? In principle they are the same. But the lemon business can not be separated from the orange business. The rate and service are about the same, and the plant, the equipment, the institution which we have created for the purpose of handling this business, was created for the orange primarily, and if it were non-existant we could not touch the lemon at the present rate; we could not handle it at all were it not for the orange.

So these two services, while they were separated by us as the two fingers are separated, still cannot be entirely cut apart and ought not to be, except as we have made the distinction ourselves. I think those propositions are an answer to the question as to whether there should be any difference in the haul. We have computed, as nearly as we could, the haul is some 2400 miles, but as stated, no matter what it may be or how wide it might be, it is not a justification for making any difference in the rate. If you do, we must, as I said, make a different rate on the orange which goes to
1811 London from the orange which goes the short distance into the South, into the Mississippi Valley.

The Chairman: Is there a substantial quantity of oranges imported to this country now at the present time?

Mr. Norton: Oh no, none at all.

The Chairman? None at all?

Mr. Norton: No. I will not be positive about that, however; there may be some from Porto Rico.

Mr. Call: The duty received by the Government amounts to about a quarter of a million dollars on oranges.

Mr. Norton: I have been going so fast in this work I have never read the Insular cases.

I think I have said all I care to say. I ought to mention one thing about this service, that in the last ten years we have changed completely the equipment which we use to give these people high service. It has been brought out here that we undertook to put in these collapsible bunkers and a new style of car so they could load more if they wanted to, and there is some question about how

successful it is. I am glad that is brought out, to illustrate what we have been endeavoring to do for this business, and that we have kept well up to the front.

I would like to have you notice on the bottom of that map
1812 (indicating) the surface of the country over which we haul this fruit. It crosses about three mountain ranges, at the height of one mile.

With this statement of fact, I will bring the discussion to a close, leaving to Mr. Durbrow the discussion of any legal questions that may be involved. I close with the statement with which I began, that on the moralities and the equities of this case, it is ours, absolutely and unqualifiedly ours.

Commissioner Prouty: Do you care to say in behalf of your company, anything about the blanket rate?

Mr. Norton: Thank you for that question. That is a point I had forgotten.

Mr. Call admitted here, as he opened up, that if you fix a graduated scale, it will be of value to him only at the port of New York; that so far as the consumer is concerned and so far as he is concerned, and so far of course as we are concerned, we all lose the lower rate west. We have a lemon rate of $1.15 into New York now. It seems to me the question therefore to be determined is about leaving that rate in effect. Mr. Call says that is the question, that that is the only rate he wants.

Commissioner Lane: You have not answered the question
1813 put to you, I think.

Mr. Norton: The question you put this morning?

Commissioner Prouty: Yes sir.

Mr. Norton: I want to talk to Mr. Nicholson. I am not able to answer that. I thought you wanted me to refer to what Mr. Call said about the sort of graduation he would want, if our answer should be we are in favor of a blanket rate and you might determine to put in a graded rate, I would not care to discuss that. I would not have any suggestion to offer on a graded rate except that single one, that he says the only rate he needs on the lemon is a rate to New York. They now have a rate of $1.15 in effect, except as to a few of these people, and we ask you to approve it.

Mr. Call: With regard to the importations, Mr. Commissioner, the total duty collected is about $45,000 on oranges.

Commissioner Lane: Mr. Norton, suppose we find the rate to Pittsburg is reasonable, would we have the right to make that rate as a reasonable rate, or would we be called upon, under the situation as it exists, to justify a $1.15 rate for the whole blanket?

Mr. Norton: You mean to take the central part of the
1814 blanket as the point?

Commissioner Lane: I mean San Bernardino or the gathering point, thence to Pittsburg; and if we find $1 is a reasonable rate to that point, would not we have the right to fix it?

Mr. Norton: Yes, to Pittsburg.

Commissioner Lane: Or to any other point we might choose?

Mr. Norton: Oh yes.

Commissioner Lane: We might find it was justifiable?

Mr. Norton: To that point?

Commissioner Lane: Yes, to that point.

Mr. Norton: Yes, I think so.

Commissioner Lane: Have we the right to fix a blanket rate that is 2,000 miles wide and find a rate to be reasonable for the whole 2,000-mile stretch?

Mr. Norton: No, I think not. I think we may do, under a competitive condition which exists here, what the Commission could not do. I do not think you could do that, because you fix a reasonable rate, and it can not be said to be reasonable all over that territory.

1815 Commissioner Lane: So $1.15 might be reasonable for a part of this distance, while 75 cents would be reasonable to another part?

Mr. Norton: My idea and the suggestion I made was that you make $1.15 to New York, and that is all we want.

Commissioner Prouty: But the whole territory is before us.

Mr. Norton: It is before you on this statement.

Commissioner Lane: Suppose a man came in from Chicago and said $1.15 to New York did not suit him? Or, suppose this Commission should say $1.15 to Chicago is not satisfactory to them?

Mr. Norton: Then you would have to fix a rate to Chicago.

Commissioner Prouty: We are not going to fix any rate to New York alone. We are fixing it to cover this territory. It is manifestly to your interest, it seems to me, to have the blanket rate established, and it would be much better to have the $1 rate established than to have that rate graded. The question is whether you will allow the Commission to pass upon the reasonableness of this rate as a blanket rate, considering the rate is somewhat low to

1816 New York and somewhat high to western points, or whether you desire us to establish such rate as we may find, independent of the rate you tendered to us, to be just and reasonable?

Mr. Norton: I am expecting to get an answer for that to give to you before we depart; but so far as our duty in the matter is concerned, I think, as I remarked once before, our history speaks for that.

Commissioner Prouty: If your history speaks for that, it would amount to this, that if we established a blanket rate you will contest it in the Commerce Court. That is what history says.

Mr. Norton: Not if it were a reasonable blanket rate. I may say to you frankly that we felt, in several instances which I have related here this afternoon, that the putting in of that rate, in the light of the concessions made to these people, was so unjust to us that we should stop at nothing to defeat it. But if anything like a reasonable blanket rate is put in, it would be different.

I am expecting an answer, which will be given to you before we depart.

1817 *Argument of Mr. C. W. Durbrow on Behalf of the Defendants.*

Mr. Durbrow: If the Commission please, I am fortunate, because the time is short, in following Mr. Norton's full and complete statement of this case; and I am again fortunate in standing before this Commission at this time with the issues so clearly defined, clearer than ever before, by the admission of counsel; and the objective point of this entire case and proceeding is easily discernable when you hear Mr. Call stand up here and say to you that he is not particularly concerned with the adjustment of the rates west of the Mississippi River, but that he is principally and deeply concerned with the reasonableness of the rate to the most severely competitive territory, New York.

When you turn to page 87 of the brief that Mr. Call has filed in this case, you will find there that he says the reason, the primary and ultimate and controlling reason, the genesis of this entire case, is the fact that they wanted to get into these competitive markets. He said to the carriers in his brief, "You must," using that word in a mandatory sense when you read that entire paragraph—

1818 "You must make a rate which will carry these commodities over these 1500 miles of desert, where no traffic is offered to you, where no traffic has its origin or destination—you must overcome these difficulties and land us there in New York and in the further distant points, so we can compete with these Sicilian growers, so we can land our commodities there in New York."

Mr. Call: I suppose I ought not to deny anything in the brief, but really that was inserted after I wrote it. I will have to stand for it, however.

Mr. Durbrow: Some one of the complainant's counsel is chargeable with this thing. Were it not for the fact my time is so short, I would like to read that as a premise to my argument. However that may be, I am going to eliminate, so far as I can, these questions which have been determined one way or the other. That is a foreign question so far as this case is concerned, because the Commerce Court has decided that question; and not only that, but this very Commission decided it in the railroad case in the 17th Interstate Commerce Report, at page 552-560, where Mr. Commissioner Prouty used the language that these complainants here in this case

1819 say they are entitled to a rate which will permit them to market their oranges and pineapples in some particular market. The Commission said, through Mr. Commissioner Prouty, that no such test of the reasonableness of the rate can be recognized. So that question is brushed aside in this case, if your Honors please, and another question is brushed aside as well, and that is whether any part of this refrigeration charge which is imposed upon the oranges should enter into this equation at all at this time, and I say to you that it should not. It should not, because your Honors found, when you reached the part if the case dealing with refrigeration, that the refrigeration charge, so far as it was measured under the standard applied by this Commission, took into consideration the

reasonableness of the compensation for the transportation of that extra quantity of ice, and said that that inheres in the refrigeration charge.

What is left here upon which this complainant can make a case? Mr. Call spiked his last gun when he withdrew from this petition the allegation relating to the competitive consideration, which he had urged so strenuously from the early hours in this case—in fact, from the time the petition was originally filed. They have left here but one question upon which they can now seek, for the first
1820 time, to make a distinction in the transportation conditions relating to lemons as distinguished from oranges, and they say that the length of haul justifies an increase in the orange rates and a reduction to $1 in the lemon rate. That question probably may be tentatively in this case, and it is entitled to some attention and consideration. But I am not going to say very much about it for this very reason, that you must look at this from two standpoints, one relating to the cost to the carrier for performing this service, and, second, you must look at it from the standpoint of shipper.

If this rate is to be considered a blanket rate, if you consider this rate applies to all this territory and is to be so applied, then I say that just so far as these shippers are entitled to have their commodities transported to Boston, New York or any other further distant point, whenever the surplus of their commodities fills up the Mississippi Valley and the territory west thereof and takes it on to New York and Boston—if that is a reasonable charge for the transportation of oranges to that point, measured by value of the service, the value of the service controlling, according to the uncontradicted evidence in this case, then I say that whenever you say, Mr. Call, that a reasonable charge for the transportation of
1821 oranges is conceded, if you will, or, when this Commission says that the reasonable charge for the transportation of the oranges 324 miles or any other distance further than the lemons is a reasonable charge, we are entitled to take that same rate mentioned in the tariff whenever the shipper avails himself of his right to have the shipment moved to the same point.

There may be some considerations which will enter into this equation, and I will endeavor to make the distinction before I conclude which will out-weigh this one factor of distance.

If this were a mileage scale of rates or a mileage scheme of rates, then of course the increased distance in the haul would make some material difference. But we have got to look at this proposition as a blanket rate, as we stand here now. We have to look at the tariffs as we find them, and find they can transport their shipments to Denver or further east, to New York and these other markets, as long as these rates stand in the tariff and these privileges are available to them; and then I say, just so far must that measure of the lemon rate be considered as against the orange rate, and if one is a just rate for the services performed, the other must necessarily
1822 be a reasonable rate.

If your Honors please, I do not intend to place any great

weight upon this question of length of haul, because I say that as long as it remains a blanket rate, that question is practically disposed of. But if it has any place in this case, then I say that the assembling haul, as well as the further distance haul to these other markets, must be taken into consideration just as well, because there can be no reason assigned why, if mileage controls, you must not measure the distance over which each particular shipment is hauled, and determine upon a mileage basis whether that is a reasonable rate; and if you do that, you are going very far toward overturning this system of blanket rate which at the present controls.

If your Honors please, I am contending here that this citrus fruit business must be considered in its entirety. In their petition they charge that the rates are unreasonable upon all citrus fruit that moves—oranges, tangerines, lemons, and grape-fruit. They have maintained that position constantly from the very beginning of this case. When you considered the railroad case and the consolidated forwarding case, you will remember you always considered
1823 the citrus fruits as one commodity. As Mr. Chambers so clearly pointed out to you this morning on the stand, it is only because of the volume of this movement of oranges and lemons and grape-fruit combined that we can make a rate as low as we can upon the lemons.

That brings me now to the first distinction which we must make in the transportation cost to the carrier, if you are going to regard these commodities as separate and distinct. When you find 33,917 cars of oranges moving in a year and you only find 6,150 cars of lemons moving in a year, and Mr. Call says they are straggling along all during the year, then I say the volume of the traffic in the orange business should make a lower rate than exists on the lemons, or the lemon rate should make a higher rate than upon the oranges, if you are going to use either one as a basis of comparison.

Further than that, you have to make another transportation distinction, because no matter what they say they will do in the future, the fact remains in this case that the average car earning on lemons is less than it is upon oranges—$315 on a car of lemons as compared to $324 on a car of oranges. The minimum weight of a car of lemons is 500 pounds less than a car of oranges. These are the facts that you have to keep in mind in determining this case, and not
1824 what somebody says they promise to do in the future. Why have they not done it all the time this litigation has been pending?

There is another reason. To my mind, there is just as much reason to make a distinction in the transportation of white and yellow pine as between oranges and lemons. Until these refined distinctions were brought to their minds by this continuous litigation, no thought was given by complainants in this case to making any distinction in the transportation of oranges and lemons.

If we leave out of consideration the length of haul, we are brought right onto the question of how are we going to determine the reasonableness of these rates. Complainants have undertaken to determine that upon a scientific principle, but I regret exceedingly to say they

have not been sustained in the principle which they have endeavored to follow. They have endeavored here in this case to show to your Honors that the rates on these commodities, lemons and oranges and particularly lemons in the case now before you, are unreasonably high as compared with commodities which are set forth in their brief and in these tables which they have filed. I want your Honors to keep in mind constantly the evidence in this case, which shows,

I say, without contradiction—and that evidence is supported
1825 by the findings of this Commission in the consolidated forwarding case and the Florida case—that these rates from Southern California on all citrus fruits to the far eastern markets were made originally to meet competition upon a blanket scale. Mr. Norton told you the rate was originally $1.40 to St. Louis and $1.70 to Chicago, and the locals were added as the shipments proceeded east. The carriers found they could not meet the competition, and they blanketed the rate on the $1.25 scale, and the oranges were not moving as far east as they do now. The Florida oranges, rail and vessel from Florida producing points into Jacksonville and Savannah moved in and supplied the seaboard. But as that commodity increased in its production, and as the California growers were striving to get to the distant markets, they came and asked for the $1.15 rate in order that their products might have a wider distribution. Remember always that that $1.25 rate was fixed to the seaboard as a blanket, and then extended back until it met the class rate, and that is what fixed the blanket rate in this case on the $1.25 and $1.15 scale. Remember that when they are making comparisons here of the orange rate- and the lemon rates with other rates,

they are comparing rates which it is conceded in this case is
1826 a forced and compelled rate. That does not furnish any proper basis or method of comparison whatever.

But I say if they are going to compare rates in this case with rates applying on other commodities, you must reduce all those factors to a common basis, to a common element, to a common equation or denominator, in order that you may have the same basis of comparison, because, as the Commission has said in the Merrill case, in 6 Interstate Commerce Report- at page 121, rates cannot be compared with rates in order to determine their reasonableness unless they are so reduced to a common basis.

When you hear Mr. Call stand up here and compare rates on wine on a 75 cent basis with the rate on oranges, when he stands here and compares canned fruits at 85 cents, which move by the sea, as do the wines likewise, he is comparing rate with rate upon a false basis, and that must be apparent to this Commission.

If your Honors please, there is just as much sense in comparing grand opera with canned grand opera as there is in comparing lemons and oranges with this canned fruit that moves. We have to take

commodities of a similar nature to get a proper comparison.
1827 If we are going to reach any conclusion in this case, we must at least compare the oranges and lemons with commodities which move in refrigerator cars under comparatively similar circumstances and conditions.

Mr. Chambers pointed out the distinction of the apple rate as compared with the orange and lemon rates. You all know apples are grown all through the United States and cannot bear the same rate as oranges and lemons, because you go right into the very communities in which the commodities are produced. The same is true to a certain extent as to melons.

It has been shown that these commodities move at different seasons of the year than oranges and lemons, and when there is available surplus refrigeration equipment. You find the territories, according to the testimony of Mr. Mortensen, very much more even than when you are considering the citrus fruits. We have to take all that into consideration in determining the service rendered by the carrier. After you compare the commodities moving in refrigerator cars with other commodities moving in refrigerator cars, you must take into consideration all the circumstances and conditions and the aggregate charge that must be made to the shipper. For instance, the cantelope shippers have to pay a high refrigeration charge because of the peculiar commodity they are transporting. You must find
1828 the orange and lemon rates are reasonable rates by comparison with these other commodities.

But you must not forget to make this distinction, that we are comparing rates made upon a competitive basis with other commodities, the rates upon which have likewise been made upon a competitive basis. And this Commission time and time again has held distinctly that that is no proper basis of comparison.

Just because I regard that point as particularly important, I want to call your Honors' attention quickly in passing to two or three decisions that directly decide that point. The first case I find in the books is the Wichita case, in the 9th Interstate Commerce Report, at page 555. We then find Mr. Commissioner Clark, in the Northwestern Lumber case, 14 I. C. R., 114, deciding the very same question, and the language that Mr. Commissioner Clark used in the Burham, Hanna, Munger case is particularly applicable. At page 310 of that decision, in the 14th Interstate Commerce Report, Mr. Commissioner Clark says that where a carrier has reduced its rate to meet competition, that cannot furnish a proper method or basis of comparison for another rate.

But that is not all. Mr. Commissioner Prouty, when he
1829 wrote the opinion in the southeastern rate case, 18th Interstate Commerce Report, at page 453, made the same observation.

But that is not all. Those cases relate to other commodities. I want to tell you that Mr. Commissioner Prouty said, when he wrote the opinion in the consolidated forwarding case, in 10 Interstate Commerce Report, at page 590—and I have reference to page 620—as follows:

"The orange rate as originally established was a competitive rate intended to enable the California grower to meet first, the competition of Florida, second, the competition of the foreign producer. It has apparently accomplished both of those purposes. The producer in California is certainly upon a level with the Florida producer in

the matter of freight rates, and the foreign orange no longer comes into serious competition with the California product. It hardly seems to me just to make this competitive rate an absolute standard by which to measure a reasonable rate when the competition has disappeared under the operation of the rate."

We find Mr. Commissioner Knapp using somewhat the same language at page 625, of the same case, where he says:

"However this may be, the proofs are convincing that this rate at the time it was fixed was materially lower than the carriers
1830 were under any legal obligation to apply. If the original rate had been considerably greater, I do not know of any sustainable ground upon which it could have been assailed. So far as I can judge this rate might have been materially advanced, if the business had continued to be of moderate dimensions, without exceeding the standard of reasonableness of which the carriers were bound to observe."

Then, speaking of the comparison of the orange rate and the lemon rate and the grape-fruit rate in that case with other commodities moving under the transcontinental scheme of the transcontinental carriers, Mr. Commissioner Knapp used this particularly strong language:

"On the other hand, if comparison be made between the orange rate and the general run of intermediate rates, which, like the orange rate, are not in any considerable degree affected by water competition, it will be found that the orange rate is beyond question relatively low. In other words, the relation of the orange rate to the rates on other traffic, moving between similar points and under similar conditions on these transcontinental lines, is more favorable to the orange shippers than the general relation of such rates in other parts of the country. So far, therefore, as the majority
1831 opinion depends on comparison with competitive rates to the Pacific coast, or other comparison with relative rates elsewhere, it seems to me to have little or no support."

The Commission had that question under consideration in that case for determination, and those are the views they expressed, and that is the very position you must stand for here now.

The very distinction that was called forth yesterday by Mr. Call's question is absolutely demonstrated upon what our friend Judge Bartine would call inexorable logic, by the Baltimore & Ohio case in 16th Interstate Commerce Report, at page 6, where this Commission make distinction between the rights of the shipper and the rights of the carrier to discriminate and to have a rate applied which is less than a reasonable rate per se. There, Mr. Call, the Commission held unequivocally that if the carrier desires to make a rate upon a competitive basis in order to secure traffic which otherwise would not move over its line, it is its privilege and it is its inalienable right to do so; but it is not the right nor is it a privilege of a shipper to say that that rate should be applied.

That is the fundamental distinction to be made in this case, if your Honors consider the blanket rate, the graded rate, or
1832 upon either basis, because I say the evidence in this case is, and I repeat, time and time again discloses absolutely without

any contradiction that this rate was made upon the $1.25 scale to meet the competition of the foreign and Florida orange.

Mr. Commissioner Prouty, when he wrote the recent Florida case, held the same, and as I recall it now, at page 486 of that very decision, in 14th Interstate Commerce Report, Mr. Commissioner Prouty said you could not use the competitive orange rates for the purposes of determining the reasonableness of a rate applying to any particular point in question in that particular proceeding. If we find that the evidence discloses those facts, if the Commission in these other cases have found and confirmed that evidence of the witnesses in this case, then I say that no matter how you may consider this scheme of rates, your Honors must start with the fundamental consideration that it is a false rate, it is a competitive rate, and it has accomplished the purpose for which it was made effect-
1833 ive. When you find that to be the fact, you must find, as you have held, that it is the right of these carriers to blanket that rate, not from the west east—they have never done that—but to find how they have got to make that rate to meet the competition at the severely competitive points on the Atlantic seaboard; not only because of the foreign product, but because the oranges from Florida move by water and rail, as your Honors know, to those very points.

When you find how low we are obliged to go at that particular point, it is all right to blanket that rate back; and it makes to the material advantage of these shippers to have us do so.

If your Honors please, I think that there is no use here in endeavoring to consume any time to impress the Commission with the fact that such comparisons are upon a false basis. We must, however, as I have already said, compare rates with other commodities of a similar nature, where the circumstances and conditions are all substantially similar as to the haul.

While you have frowned upon this method of using a competitive rate as a basis of comparison; while you have said, in the Morrow case that you are obliged to reduce all the elements to a common denominator or factor, you have further said that, when this
1834 Commission has determined the reasonableness of a rate applying upon a particular commodity, that may be used as a measure of determining the reasonableness of the rate; and I cite you, if your Honors please, to the Davenport case, reported in 11 I. C. C., page 650, where that principle is announced.

Then I want to ask you, in this case, whether you conclude to determine the rates upon a blanket scheme or upon a graded basis, to look to your orders in the Consolidated Forwarding cases, where Mr. Commissioner Prouty, Chairman Knapp and Mr. Commissioner Clements, who wrote that decision, were uniform in holding (and the decision was agreed to by all the other Commissioners) that it was the service performed by the carriers that was the prior consideration.

The Commission held that they would have sustained the $1.25 rate if the service had been satisfactory; and, as the Commission expressly say, if the carriers had made the transit to Chicago on the morning of the eighth day. And we do that now.

You will find in this very case here that the service is satisfactory, and dependable. It is conceded by the witnesses in this case,
1835 and the exhibits of this case, that we do bring these commodities to Chicago on the morning of the eighth day. When you look to the Consolidated Forwarding case in one measure you can go a step farther and look to the Florida case. Mr. Commissioner Prouty finds there, and the evidence in this case here supports his finding, that the average haul was 2500 miles on the California fruit, generally speaking, and that the haul from Florida was 1250 miles. And Mr. Commissioner Prouty finds that, although the distance is twice as great, the rate is less on the California product.

If we can show that the circumstances and conditions surrounding the transportation of the lemons are the same, then I say that if the blanket rates are going to control, your Honors must absolutely find that the rate on the lemons to these different territories are reasonable.

I have not the time to make an analysis of these rates, either upon the mileage basis, upon a gross or net ton per mile basis, or upon a per car mile basis. The exhibits disclose that fully.

I do want to say, however, that if the Commission will take the aggregate charge that is paid by the Florida grower, it will find that the California shippers pay a much less rate, no matter how it may be measured, upon this commodity. I say, further, that if you
1836 determine the reasonableness of the rate per ton per mile on the average haul in California and in the Florida cases, found by this Commission, you will find that, if the charge had been applied upon the same per ton per mile basis, it would be, instead of $1.15, or $1.10, as you please, $1.76.

I desire to draw your attention to the comparative table that we have disclosed here in these exhibits. I cannot understand how it makes to the interest of the shippers to stand here and intimate that they may accept a graded scale of rates; because, if those two findings are in any wise controlling, in the Florida case, and those distances which carry those rates are at all to be given any consideration, then I say that when you grade this rate, not from the east to the west, if you put it on a graded scale, but from the west to the east, it is going to make to the material disadvantage of our friends the enemy.

I am frank to say, if your Honors please, that I believe that our interests in this particular are reciprocal and mutual. The carriers are not standing here claiming that through any philanthropic motive we have made these blanket rates effective. We have,
1837 however, done it because the shippers came to us, and they virtually made the rate, because they said: "We can pay this, and no more, because of the severe competition, and we want such and such a rate. We want this relief in the lemon case now, but for all time in the orange case." And we made that rate to them, when they came to us, because we wanted that business. We felt it would not move under any higher rate; and, as I argued to your Honors when this case was presented before, if the orange rate and the lemon rate are to be considered uniform in their application, and your

Honors undertake to reduce the orange rate, and the lemon rate in this case, you are going to disrupt the condition that, is at present adjusted down there in Florida. This Commission endeavored to the utmost to enable those Florida shippers to secure the benefits of those markets, and just so far those Florida shippers are going to be discriminated against and prejudiced by the application of these rates from California.

I am not here defending a blanket rate or a graded rate. I do say, however, and say it without any contradiction—and if this Commission desires, I will take the statistical data we have introduced and demonstrate the correctness of this position—that if we can
1838 use the Consolidated Forwarding figures, and if we can use the Florida figures as a basis, that then we can demonstrate to you that the rates from California territory east, if they are applied on that basis, upon a mileage or a blanket scale, will compel this Commission, if they leave out of consideration the fact that the rate has been compelled and is upon that basis, to absolutely increase our rates and increase our gross and net earnings.

If your Honors please, I say that we want to compare rate with rate, by similar commodities moving under substantially similar circumstances and conditions; but I do not mean to be understood as saying that the haul from Southern California to the eastern territories, except as it may exceed in volume the Florida tonnage is on a parity with the Florida haul; because, if you read the decision of Mr. Commissioner Prouty in both of those cases, carefully, you will find that the Florida rail rate to all of these points has been compelled by the competition of the steamer lines serving Savannah and Jacksonville, and that rate itself is a low rate. Those lines serving that territory move over a territory where traffic is offered, where traffic is delivered in the course of its entire transit. I am speaking, if you please, from the base points up to the ultimate destination of those shipments.

1839 I call attention to the fact that the carriers here are obliged to transport those shipments over a desert country, for 1,500 miles, where no traffic is offered or delivered.

If we are going to put these rates in upon a mileage basis; if we are going to start from southern California and grade the rates on the west, we will start it on the east, and it inevitably follows, if you follow that system, that you have to start in 126 miles down there in San Diego, and come up to Los Angeles, and take it 60 miles into Colton and San Bernardino; you have to start 110 miles from Santa Barbara and bring it down in that territory; you have to take the rate applying via the Ogden gateway, if the shippers have the right to haul that way, and apply the rate from Porterville in the north through the southern gateway; and if you put it upon a mileage basis, these shippers will be denied the right to move those shipments over these lines. That follows if you try to determine those rates upon a mileage basis. That mileage will control. And if it does control, it must be controlled by the mileage actually over which that shipment moves. Your Honors cannot suppose for a moment, nor can our friends, that these divergent privileges can be permitted

to stand as they are today if rates are to be determined upon the mileage basis.

1840 I am not throwing that down as a bugaboo to scare our friends, because I am frank to say to this Commission that I believe our interests are reciprocal and mutual. I believe our interests are so far reciprocal and mutual that we should strive to maintain the present adjustment of rates, which was to the material welfare of the shippers, and to the material welfare of the carriers, building up a tremendous business, that is bound to increase as time goes on, as disclosed by this map that the complainants introduced in evidence and by the statistical data before this Commission.

There is one other case I have in mind which may probably furnish a proper basis of comparison. I have reference to the Asparagus shippers' case, 17 I. C. C. Reps., 452, where this Commission found that, for a haul of 740 miles, a rate of 92.3 cents was a reasonable rate for shipments moving under refrigeration, through a territory where the population was greater than in the territory down through this territory, and where we did not have the physical difficulties to overcome that exist in this case. They found further, extending the rate upon a mileage scale, that for 998 miles, I believe, the rate should be $1.077. There is another basis.

1841 If you take the rates applied by this Commission in other cases, where similar commodities are involved, which the Commission thinks are low rates for this service (as in the decision in the Florida case, to enable those Florida growers to get into these markets) if this basis is applied, upon either a graded scale or a blanket system, we are obliged to find that the rates in this case must be adjusted upon such a basis as to increase the earnings of these carriers.

If your Honors please, I cannot afford to dwell any longer upon the question of a comparison of rates.

I do want to say something here with reference to the different reasons which we assign for making the rates upon oranges and lemons the same. I am going to assume, in that branch of the argument, that this Commission is going to place some dependence upon these decisions to which I have referred. I am going to assume that the orange rate, established as it is on the $1.15 scale from southern California to all this blanketed territory, is a reasonable rate, as a blanket rate, based, as it was, as I understand the decision in this case, upon the other rates applying from these other territories.

Mr. Call: When did they fix the $1.15 rate?

1842 Mr. Durbrow: They recognize the rate as $1.15 in this very case; and in the Consolidated Forwarding case, they said the rate would be $1.25.

Mr. Call: $1.10.

Mr. Durbrow: No. $1.25. They said the rate would be $1.25, if they made Chicago on the morning of the eighth day, which we are doing now.

I say to your Honors that I am going to use that as a basis, or

take that as a basis adopted, and I am going to ask myself why the rate on the lemons and the oranges should be the same; why, if for any reason, there should be a distinction in this case in the rate on oranges and lemons, it should be greater on the lemons than on the oranges; and for the following reasons:

We all know that as the volume of the business increases, of a particular tonnage, the carriers uniformly make a lower rate, and can afford to do so.

We know that this orange tonnage greatly exceeds the lemon tonnage; approximately 3400 cars in 1908 and 1909, as compared with 6150 cars of lemons.

If your Honors are to consider these as separate commodities you must take this tonnage of the lemons by itself, and leave out of consideration the orange rate, except for purposes of com-
1843 parison.

Do you mean to say that you would apply a higher rate on the commodity which moves in greater volume than you would upon the commodity that moves in lesser volume, if there were no other factors to be taken into consideration? I apprehend your Honors would find directly to the contrary, because you have so found in numerous cases; and I have particular reference to the language that was used in some of the northwest lumber cases.

Not only does the volume of the business warrant a higher rate on the lemons than on the oranges but, as Mr. Chambers says, those oranges carry on the lemon business.

I wish to direct your attention however to the fact, as I already have, that the earnings per car upon the lemons are actually $9 less than they are upon the oranges.

I wish to direct your Honors' attention to the fact that the oranges meet the competition of the foreign growers as well as they originally met the competition of the domestic growers in Florida. I wish to direct your Honors' attention to the fact that there is actually keener competition on the oranges than there is on the lemons.

The orange grower has to meet the competition of those
1844 Florida growers, and, as Mr. Commissioner Prouty found, tonnage is steadily increasing.

If your Honors please, if you are going to measure competition, taking the conditions as they actually exist today, you will find that the competition on the oranges is greater than it is on the lemons. I think that abundantly appears by a careful analysis and reading of all these decisions of the Commission.

The testimony discloses that the production of lemons is greater per acre; that the selling price is higher; that the lemons can be held indefinitely for favorable markets. Mr. Woodward testified that there were 1500 cars of lemons stored in California waiting for a favorable market.

Your Honors know that the lemon growers, according to the testimony, as Mr. Norton states in his brief, are practically autocrats west of the Mississippi River. They meet no competition there whatsoever, and absolutely fix the price.

It is only as that volume of tonnage of lemons increases and moves further east that these peopl*l* are going to find that they are moving towards the eastern markets, just as the oranges did.

I wish you to look at the map of the complainants in this
1845 case and find that, in one year, from 1909-1910 to 1910-1911, the line has moved from 200 to 250 miles further east.

That is the history of the orange case. That is the reason the rate was reduced from $1.25 to $1.15, because they were supplying the further western markets, and they had to get into the east to be where the competition was more severe.

Do not these gentlemen here wish to look to the future? Do they want this rate to be determined now, and have endless litigation? No. They want to look to the future, and they will find these lemons creeping steadily eastward as the volume of this tonnage increases, as these new trees come into bearing. As these lemons are moved further east, there will be more necessity for a blanket rate, just as there was a greater necessity for the orange rate; and you will find the length of the lemon haul increasing just as the production of the lemons increases.

The Chairman: Your time has expired, Mr. Durbrow. We will now hear Mr. Lamb.

Argument of Mr. Dillard on Behalf of the Defendants.

Mr. Dillard: I should like, if the Commission can grant th- courtesy, just a few minutes to call attention to one little matter, if it is not trespassing too much upon your valuable time. I shall not say one single thing unless you desire to grant me five minutes in
1846 which to say it. If you would rather not, I will let it pass.

The Chairman: Of course we shall have to hear you, Mr. Dillard. We try to arrange the time in these cases so that all can be heard. These things come along every day.

Mr. Dillard: It is only a little matter to which I wish to call your attention, and I know that it is only by special courtesy of the Commission that I can bring it forward at this time. I trust that the Commission will not find it necessary in this case to give a graded rate. Speaking for myself personally, and for my carriers, in my judgment it is better, both for the shippers and the carriers, that the graded rate should not be put in.

Mr. Norton has explained that he cannot give any answer, as yet, to your question as to whether or not the carriers will contest a blanket rate if one shall be established by the Commission. I therefore cannot give any now. It would be useless for me to make any answer unless our answer could be concurrent.

The point to which I desire to call the attention of the Commission is simply this: and let me now speak very deliberately, and with the utmost respect to the Commission. I think this Com-
1847 mission will bear me out in saying that I have always said, in their presence, that I believed the body was one helpful to the shippers and the railroads in trying to do justice between them.

I think no man has heard me speak to the contrary, at any place, because it is my real view.

I say, that it would be very unfortunate if the time should ever come when this Commission and counsel who appear before it cannot speak to each other with absolute frankness and candor, counsel always using perfect respect to the Commission. With that preface, I desire to say this:

That this Commission, if it finds it necessary to put in a graded rate, cannot, with regard to the decisions which they have made—I say it with respect—they cannot, with regard to a judicial view of the matter on their part, and a determination to do exact right, as far as I can see, put in a graded rate at New York that would not, as far as I can figure it up in the hurried time available, run over $1.40.

Let us see if I am right about that, by referring to a little statement that I have before me. I shall have to refer you to your own decisions and to matters that you have had heretofore before you, that I shall not have time to go into.

1848 The per ton per mile does not amount to a great deal; sometimes it is a little helpful; but it serves as a measure and as a balance wheel only. Therefore I shall not put any great reliance on it, and shall simply show you how it will not amount to a great deal.

I take the figures here from Florida. I find that to Indianapolis the distance is 1166 miles, the rate per ton per mile 1.501. When you come to St. Louis, the distance is 1213 miles and the rate per ton per mile 1.443. When you get to Columbus the distance is 1337 miles and the rate per ton per mile 1.299. When you come down to Omaha, the distance is 1627 miles and the rate per ton per mile 1.321. Showing that you cannot rely on ton miles.

Therefore, in accord with what I am going to say, let us leave out the ton miles for a moment.

I could illustrate this very much better, by taking other places, but I shall take Omaha alone. The distance from Florida to Omaha allowing the full distance from the concentrating points is 1627 miles. There you have fixed a rate, after much consideration, of 1.075. That Florida rate is oftentimes before you. The distance to Omaha from California points, is 1904 miles. That is in round numbers 300 miles further. The distance, then, that you

1849 would have to consider to Omaha from California on citrus fruits, would be 300 miles further.

The only possible transportation reason which you have found or can find for making a lower rate on lemons and citrus fruits is the lower distance in the average haul. I do not believe anywhere you have found a different transportation reason, or can find it. Whether or not that is a good reason, I shall not say. But that is all that has been found. Therefore, if you fix a graded rate, your rate on oranges and lemons would be the same.

I cannot believe that this Commission, looking back on all that it has done in the past will say that *that* the $1.15 rate on oranges is too low. But whether you will or not, let us take oranges and lemons together. Your rate from Florida to Omaha is $1.07. By any sort of calculation which you make, that would make a rate to Omaha of

$1.11 cents to $1.12 at least, on citrus fruits. Grade that up to New York city, by the very differences of percentage that you used in making your Reno grades in the class rates, and I think it would be 31 cents more, which would make it, according to your own measure,
$1.40 to New York. Those figures are approxi-ly correct. If
1850 your Honors please, Mr. Call said they would be pleased with a rate of $1 to New York, graded back. If this Commission could have put in a rate like that, or a rate approximating it, I would be a disturbed man; because, speaking with the perfect frankness to which I referred a moment ago, I would feel that the Commission had abdicated, for the time being, their judicial functions, and having once said that a rate should be thus and so, were permitting passion to cloud their judgment.

I thank your Honors for your attention.

The Chairman: Mr. Lamb, we will hear from you, now.

Argument of William E. Lamb, Esquire, on Behalf of the Complainants.

Mr. Lamb: May it please the Commission, I had hoped, before I commenced, that the railroads would have said what position they intended to take in case the Commission should put in this so-called blanket rate.

The Complainants are not here to fight against a blanket rate. They are not here to fight for a graded rate. What we want is a reasonable rate and a legal one.

We do not want to come in and ask the Commission to give
1851 the carriers the privilege of publishing a rate in the form of a blanket, for these gentlemen to advocate it here, and then go to the Commerce Court and say that the Commission exceeded its power.

Personally, for the interests of the fruit growers, I believe that the blanket rate is better, for the carriers and for the shippers.

We cannot afford, however, to take any chances with the legal questions involved. The indications are, at this time, that the Commerce Court would take an adverse view of the Commission's power to fix a rate, we will say at the Atlantic seaboard or start at the other side of the blanket, as the carriers would have us do, and say that the same rate, as a maximum, would be reasonable to charge for the transportation of lemons. Consequently, unless these carriers are willing to say to the Commission that they want the Commission to consider this rate as a blanket proposition, and that whatever rate is established at the seaboard as a maximum be permitted to be established at the intermediate points; and that, if the Commission does that, its action will not be questioned in the Commerce Court or
any other court on the ground of want of power; unless they
1852 will do that, we want the Commission to put in a rate that will be legal: If it happens to be a rate that is graded back, we cannot help it; but we want the order to stand. We do not want the Commission to make an order of any kind that will not stand.

Mr. Norton: In view of the fact that Mr. Lamb is about to dis-

cuss the graded system, and will, therefore, probably occupy some time on that subject, I think it is only fair to interrupt him to say that since I stated, before, that I was not ready to make a reply to the request of the Commission, I have received telegraphic authority to say to the Commission that, in this case, in the interest of the industry for which we put in the blanket rate, we will stipulate, because we believe that industry cannot get on without it, that we shall not contest in this case a blanket rate that may be made because it is a blanket rate, so far as the Santa Fe is concerned. But that is to apply only to this case, and it will leave us free to challenge any order the Commission may make as to reasonableness or other matters.

Mr. Dillard: I desire to make the same statements, if the Commission please, as to the Southern Pacific. When I spoke a moment ago I was unaware that Mr. Norton had received the telegram to which he has referred.

1853 I make the same statement with, of course, the reservation of all rights to contest the action of the Commission on other points; but we will not contest it on the ground that this Commission has no power to put in a blanket rate or to revise a blanket rate, even if we have a right to do so. We will waive that.

I make that statement for all the lines commonly known as the Harriman Lines.

Commissioner Lane: How about the Salt Lake Line?

Mr. Dillard: I am not authorized to speak for them.

Mr. Durbrow: We join in that position.

Commissioner Lane: Do you represent the Salt Lake line?

Mr. Durbrow: Yes.

The Chairman: Are there any other carriers represented by any of you here? We have heard from the Santa Fe System, the Harriman Lines, and the Salt Lake Road.

Mr. Lamb: That statement seems to have eliminated the necessity of speaking of the irregularities and inconsistencies that may sometimes arise by the application of a blanket or a group rate.

Boiled down, what we want is this; a reasonable rate. We contend that if under the blanket system the Commission fixes what

1854 it deems a reasonable rate to New York for the transportation, based on the fact that the blanket is to cover a wide expanse of territory, the rate may be made with the power on the part of the carriers to grade it back, if they see fit; but to make a rate to the seaboard and say that you find that is the maximum reasonable rate beyond which the carriers may not go, and that they may have power to establish it at the intermediate points or grade it down as they see fit. In other words, we want a rate fixed as to the seaboard, and then a rate that the Commission thinks, based upon the tonnage that is offered, based upon the transportation conditions that apply to the intermediate points, that they may say would be fairly reasonable to the intermediate points.

Commissioner Clark: Do you think that for a blanket 2000 miles wide a reasonable rate should be a reasonable rate to the more distant point in that blanket?

Mr. Lamb: Not if the tonnage was the same to every point in the blanket. There could be no theory of rate making——

Commissioner Prouty: Why, have we not to establish, substantially, a rate for the average haul?

Mr. Lamb: I will come to that in a moment, Mr. Commissioner, if you will let me answer Commissioner Clark first.

1855 The fact is that a blanket that wide, when you come to what would be a reasonable charge for the service to the nearest point of the blanket, compared with a reasonable charge to the farthest point in the blanket, the same rate could not be justified to each place, unless the difference in tonnage, the total revenue on the business handled, would warrant it.

As an illustration, these carriers say that to Denver, if you please, the rate of a dollar is a reasonable rate; that that gives them a reasonable return upon their property; that it is a reasonable value of the service performed.

Take a car of lemons destined to New York and a car destined to Denver, and they both move in the same train. It costs no more to handle one than the other to Denver. If the dollar rate is the reasonable rate to Denver, then there must be sufficient profit in the business up to Denver to permit of the haul to New York city.

In other words, supposing there is 50 cents profit in the rate to Denver, then it cannot cost more than 50 cents to go to New York. That is my idea.

If there was only one car going to New York, and only one car going to Denver, it would be preposterous for anybody to say that the rate should be the same, or that they could be reasonable.

1856 But if the tonnage is greater, if we say that there are 100 cars moving to Denver in a given time and a thousand cars moving to New York, on the total business, they might be warranted in carrying that added tonnage to New York; otherwise they would not.

On the question of the average distance on a blanket rate, that may be entitled to weight, where the average haul——

Commissioner Prouty: When I say "average haul" I do not mean average distance. I mean the average haul of all the shipments. If there are ten shipments to the seaboard, and one shipment to Denver, half way between the seaboard and Denver would not be the average haul.

Mr. Lamb: You mean the average haul of all the shipments?

Commissioner Prouty: Of all the shipments.

Mr. Lamb: Of course I never have thought the average haul was the fair way to measure the reasonableness of a rate, if we were not considering an entire blanket. This case was presented originally as a blanket proposition, and I think the average haul was a proper element to take into account, and if you find that the average haul for lemons was less than the average haul on oranges, that that would be a matter to take into account; because, when you come to

1857 figure on cost of transportation, car for car, it must be apparent that the less distance will cost less than the greater dis-

tance. There is no getting away from that, on the basis of cost of transportation. It is bound to be so.

To get at the reasonableness of the rate, however, is a question about which different minds may reasonably differ. There is no measure for it, except the honest judgment of honest men, when they have the facts before them.

You can only take into account what these carriers have done in other instances, and say: "What have you been willing to do for a dollar for some other man or industry?"

I agree with Mr. Durbrow that when you find a highly competitive rate, and it is proven to be a highly competitive rate, and lower than it otherwise would have been, it serves but little as a help in determining what the reasonable rate ought to be on some other or similar product between other points.

I do say, however, that when you find it is not the same kind of product, but a product that moves, as a transportation proposition, under substantially similar circumstances and conditions, and yet find what they have been willing to do that for, that it is en-
1858 titled to some weight, and the Commission can consider, and take into account, what the carriers have done.

You must take into account, I think, and it is patent that every traffic man must take into account the car revenue in the carload business.

It does not cost, as a transportation proposition, any more to handle a car of 30,000 pounds of rock than it does to handle a car of 30,000 pounds of wheat, so far as the equipment is concerned, the coal, engine power, wages of the men, and everything of that kind.

So that, when you take a transportation proposition, and you find that for similar distances the car revenue based upon gross weight or net revenue paying weight is approximately the same for the same distance, that is entitled to some weight.

In the case of deciduous fruits, as pointed out by Mr. Call, in the case of canteloupes, in the case of celery, the car earnings on a car of lemons are considerably in excess of the earnings on those other cars. The deciduous fruits, the vegetables and the canteloupes move at a given time of the year, and at the time of the movement there is a good deal of work and a good deal of expense attendant
1859 upon furnishing equipment, because the fruit must be handled in a short space of time. The lemons move steadily.

Mr. Chambers this morning made a comment upon the fact that canteloupes moved at a time when they were just getting over the orange business, and that the deciduous fruits moved at some time when they were either getting through with the lemon business or the canteloupe business. So that, consequently, he takes those things into account. But when the lemon moves steadily during the year, and oranges move with more regularity than the other fruits, he says that this citrus industry must be charged with all the expenses of keeping these cars, and all of the refrigerator cars must be determined by the citrus fruit business and that, therefore, they can-

not do for the lemon what they have been doing for the vegetables, the celery, canteloupes and so forth.

Mr. Durbrow: May I correct a statement? As to the deciduous fruits, in your Exhibit No. 5, the minimum is 26,000——

Mr. Lamb: I will get to that.

Mr. Durbrow: And as to the $1.15 rate, you said the earnings on the lemons were higher than on the citrus fruits,——

Mr. Lamb: I will get to that, Mr. Durbrow.

As to the minimum weights, I spoke of the revenue per car.
1860 I have in mind the minimum weights on these different commodities, celery 20,000 pounds, deciduous fruit, 26,000 pounds, apples 30,000 pounds.

The minimum weight of lemons is 26,200 pounds but we say that the minimum should have something to do with saying what the reasonableness of the rates should be; that the carriers always make their rates based upon the minimum, and if we are willing to accept and say to the Commission that a rate of $1 to the Atlantic seaboard taking New York as a representative, or leaving out New England and taking New York alone, a rate of $1, based upon a 34,000 pound minimum is reasonable, the Commission should have authority to put it in. That would yield them a revenue per car of $340. I do not know of any other car of a similar nature that moves under refrigeration where they would get that car revenue.

Mr. Call: That would not go under refrigeration.

Mr. Lamb: Under ventilation, I should say.

Commissioner Prouty: It sometimes moves under refrigeration?

Mr. Lamb: About 14 per cent.

Commissioner Prouty: If that rate were made under ventilation, what should be the rate under refrigeration?

1861 Mr. Lamb: $1.15. We are willing to accept what they have offered as a reasonable rate to the Atlantic seaboard under refrigeration. We are willing to start with that. But on that ventilation rate, when we offer them 34,000 pounds, we say the rate should be a dollar, because the car revenue will be more than they will get on their $1.15.

Mr. Norton: We did not offer $1.15 to the Atlantic seaboard on refrigeration alone. We offered it on the whole traffic.

Mr. Lamb: I know, but I am talking about your rate to the Atlantic seaboard, $1.15, based upon refrigeration. If that is so, we may start with the assumption of $1.15 for a minimum of 26,200 pounds moving under refrigeration, which requires considerable extra handling as the car has to be set out and reiced in transit; that when you offer them a car containing 34,000 pounds, which moves through without extra cost of refrigeration, that will produce a car revenue to a greater amount, and the gross weight will still be less; that the Commission can make a rate of $1 as a reasonable rate to the Atlantic seaboard, based upon this business. It only needs a pencil and paper to figure these things out; that that is what would result. If we give them the 34,000 pound minimum on the

ventilated car, at 34,000 pounds with the $1 rate, it will yield
1862 them more revenue than the $1.15 rate will yield them to New York based upon the present minimum.

As to what has been said about the prosperity of this industry and all that. I say that is not a proper element to take into account in determining the rate. Whether or not an industry is prosperous may depend upon the man's ingenuity, or his energy or thrift in the management of the business.

The cost to the carrier and the value of the service are the things that the Commission must get at as a transportation matter.

The Supreme Court of the United States has never said anything to the contrary, notwithstanding these gentlemen have said, from time to time, that they make rates on the basis of what the traffic would bear, the Supreme Court has said, with reference to regulating tribunals, that what the carriers have a right to ask is a reasonable return on the fair value of the instrumentality used. They followed that by saying that what the public has a right to demand is that the carrier charge no more than the service is reasonably worth.

In other words, a carrier is entitled to a fair return on the fair value of his property, based upon reasonable rates; but it is not entitled to that return upon the value of his property based
1863 upon unreasonable rates.

Mr. Norton: How can you get the value of property which depends for value upon rates?

Mr. Lamb: I am not discussing that. I am not saying you can determine in this particular case, what a given rate should be upon any commodity. Neither Mr. Norton nor Mr. Peabody can come before this Commission and say what it costs to move lemons between Los Angeles and New York or any other point. What they have to do is to base part of it upon an assumption. Your first assumption is that the cost of transporting lemons is as high as or higher than the average cost of the transportation of all other freight. They start with that assumption.

In figuring the cost which will be charged against the lemons, they say that it makes no difference, in that average cost, whether you move the shipment one mile, two miles, three miles or ten miles, or three thousand miles; that the cost is the same every mile. In other words, if it costs a certain amount to move one mile, it costs ten times as much to move it ten miles. If it moves 1909 miles, as stated in his illustration the cost is 1909 times that, which is against every theory of rate-making that these gentlemen have ever
1864 offered or introduced.

Mr. Norton: Mr. Peabody says that is not in his statement.

Mr. Lamb: You multiply your average cost Mr. Peabody, of moving a gross ton one mile by 1909 miles, do you not?

Mr. Peabody: We do not.

Mr. Lamb: What do you do, then?

Mr. Peabody: We ascertain the cost for moving that car, the tonnage in it, over each separate division.

Mr. Lamb: Do you not multiply your average cost on that division by the mileage on that division?

Mr. Peabody: No sir.

Mr. Call: It is just the difference of taking a division instead of the miles.

Mr. Lamb: He takes the tonnage that moves over each division. If it happens to be a little light during a given period, that he takes as an illustration, the cost will be high. If the tonnage happens to be heavy at that particular time, the cost will be low. In other words, they determine cost on what happens to move during the particular time for which they use the figures.

Mr. Norton: Just as what you pay depends on whether or not a large demand——

1865 Mr. Lamb: Now, Mr. Norton, you had your chance to argue this matter and my time is very limited. Otherwise I should be very glad to permit your interruptions.

Mr. Norton: That is right. Pardon me.

Mr. Lamb: Another thing: They charge the taxes to the freight business on the basis not of what the value of the property used in the freight business is, but what the revenue is produced by the freight traffic. In other words, if the freight traffic produces 65 per cent of the revenue, Mr. Peabody charged up 65 per cent of the taxes to the freight business.

They do not attempt to apportion the cost of the company freight, that is carried as company freight, that is used in the passenger service, and they cannot do it. It never has been done.

Yet they come in here and say that, upon the basis of those figures, which start with an assumption, that shows cost.

Mr. Peabody was very careful to say that he was using the word "deficit". He does not claim that they would lose money on this lemon traffic at a dollar. He simply says that he thinks they ought to have more to make the lemon traffic pay its proper share. But he is figuring the cost to the Atlantic seaboard. He should take the tonnage, and he should figure on the same basis that he

1866 does for his own line, the tonnage actually moving over the eastern lines during the same period, and find out what is the average cost of moving the freight on those lines from the Atlantic seaboard to Los Angeles or the Pacific Coast. If he used it for the entire distance, he will find that the cost is a great deal less than it is on the Santa Fe. Mr. Peabody also takes into account the revenue that the Santa Fe gets, his division, if you please, and says that because the Santa Fe is unable to get more out of it,—this division—it makes the business unprofitable. This Commission has said many times you could not fix those divisions if those carriers wanted to agree on that.

The question is: Is this rate of a dollar on lemons to the Atlantic seaboard reasonable for that service, for a ventilated car, with the load of 34,000 pounds, or producing a revenue of $340?

We are willing to accept their figures of $1.15 on their refrigerator shipments of lemons; but we say when we send a ventilated ship-

ment, with that added load and that added revenue, the car does not have to move as rapidly, and it is not a perishable fruit, and moves in a slower train, and escapes all those other things that are
1867 incident to refrigerator fruits, we are entitled to that rate of $1 to New York city.

Mr. Call wishes to make a few remarks, and I shall yield to him the rest of my time.

Final Argument of Asa F. Call, Esquire, on Behalf of the Complainants.

Mr. Call: Not in the way of argument, but simply as a statement of our position, I wish to say a few words, in order to make it perfectly clear.

In view of the attitude of counsel here, and that of their witnesses, we ask the Commission to reconsider the orange rate, along with this matter. Whatever conclusion the Commission comes to in considering the two together, we are satisfied with on either; but the orange rate should be considered again, with it, so that you will be clear in your own minds as to the distinctions that should govern, if any, in the two rates.

Commissioner Lane: But the stipulations made by counsel did not cover oranges?

Mr. Call: No. They do not cover oranges.

Mr. Norton: You ask the Commission to decide the orange subject without a trial?

1868 Mr. Call: I think it should be set aside now.

Commissioner Prouty: If we are to consider this whole question now, as we did before, there would not be any necessity for that. We considered the blanket rate before, and we held that the rate on lemons might be lower than the rate on oranges.

Now we are to consider whether that is right or not.

Would there be any particular reason why we should strike off the orange rate, in that view of the case, and fix it over again?

Mr. Call: They will evidently make a fight in court if there is any rate on lemons less than the $1.15 rate. And they will evidently make one ground of that fight a comparison between the orange rate and the lemon rate.

It seemed to me that, while we could not now decide the orange rate, the Commission could make an order reopening that case, so that, if it was concluded that the orange rate should be changed, to meet your view in the lemon case, you could do so; and that the point could not be raised in the Commerce Court or anywhere else that there was a finding, which I do not think there was, but it is said by the Commerce Court—that there is an order dismiss-
1869 ing the orange rate case which is tantamount to saying that the orange rate is satisfactory to the Commission. I did not understand that was so, but if it is susceptible of that conclusion as to that orange decision, it should not rest in that position.

It seems to me that the orange rate should be set aside, and be held in abeyance during this time and then, if an order should be made in the lemon case which in the mind of the Commission would be doubtful, as to whether it was in such shape as to meet the orange rate of $1.15, we would then be in a position to protect ourselves.

Mr. Norton: In other words, in the parlance of the day, you want the Commission to give us a cold deck?

Mr. Call: No sir. I want the Commission to protect us and itself against the inconsistency of your coming in here and claiming one thing, and then going before the court and claiming something else. If you want a $1.15 rate on oranges, it is up to you to say to this Commission that you will not question it.

Mr. Norton: The Commission will not grant the request you make.

Mr. Call: I can make my request, and it is for the Commission to say what they will do with it.

1870 I would say, if I were on this Commission: Either you play fair with the Commission and the courts——

Mr. Norton: We are playing fair. I think your proposal to the Commission is absolutely unfair.

Mr. Call: If you want a dollar fifteen rate on oranges——

Mr. Norton: We will have a rate on oranges when it is tried.

Mr. Call: I propose to try it, but I do not want you to be in a position to say to the Commerce Court that the Commission has been unfair in making a difference here in these two rates.

Mr. Norton: We are not saying that.

Mr. Call: That is what you have said and are saying. If that question should arise, we are willing to take the larger load than oranges, for the sake of the rate, when that question comes up.

Commissioner Lane: All you want, Mr. Call, is that we shall fix a rate on lemons in this case, and if we think the same rate should be fixed on oranges, reopen the orange case?

Mr. Call: That is all.

Mr. Norton: I did not understand that at all. He made this explanation: That if we go into the Commerce Court, if you

1871 fix a rate on lemons now, under our stipulation, not satisfactory to us, and we go into the Commerce Court, one of the grounds of appeal upon that lemon rate will be that you have fixed previously a different rate on oranges for exactly the same service. Therefore he wants you now to vacate that $1.15 rate order so that, if we should go into the Commerce Court on the lemon rate that you make here, we will have that cut from under our feet. I say his proposal is unfair.

Commissioner Lane: Supposing that we should find that the dollar blanket rate on lemons was reasonable and we should think, also, that a dollar blanket rate on oranges was reasonable; that the two should have the same rate: Would we not be right, then, in setting aside the orange decision?

Mr. Norton: That is another matter. You could do that; but I

think you should not do it without a trial. That is not the proposal.

Mr. Call: I shall not ask it without a trial. The point is this: Suppose the Commission, in considering this matter, should conclude that a dollar blanket rate on lemons was reasonable, and the Commission should also come to the conclusion that $1.15 for oranges was too high.

Commissioner Lane: I do not say so, but that the same
1872 rate should apply on oranges that should apply on lemons.

Mr. Call: Yes; that the same rate should apply. Or, supposing the Commission concluded that there should be a different rate on ventilator shipments than on refrigerator shipments, and that oranges are all on the same basis, so that there might be an inconsistency.

The point in my mind is to simply bear in mind the proposition that these people are here to raise every possible question, and just to think of it when you are deciding the lemon rate case, as to whether it is inconsistent with the orange rate decision.

Mr. Norton: That is another story. My remark does not apply to that.

Mr. Call: And if it is not absolutely consistent, to set aside the orange rate decision, and reopen it for further argument.

Commissioner Prouty: Do you stand by what Mr. Lamb said, that you are willing to accept a minimum on lemons of 34,000 pounds? You have said that?

Mr. Call: I have said that.

Commissioner Prouty: Are you willing to accept a rate of $1.15?

1873 Mr. Call: I did not say that.

Commissioner Prouty: I know. I ask if you are willing to accept that?

Mr. Call: No; I do not want to say that. Mr. Lamb did not understand me. What I said was that if we had a graded rate, we would take that as a basis to the seaboard,—$1.15.

I am not willing to accept anything more than a dollar rate as far as I am concerned, except to New England territory. I do not think we should face that paper rate in there, because they might make out of that a pretty long haul, and a haul we would never make; and they will bring in figures, in that connection, showing alleged confiscation.

I thank the Commission for its attention.

Mr. Norton: I would like to say, Mr. Chairman, that when we made our stipulation a while ago, you inquired whether there were any other roads here, the representatives of which had not spoken in that connection.

These initial carriers have always practically controlled the connecting roads' rates.

The Chairman: They publish the rates?

Mr. Norton: Yes. So that you may feel that our stipulation will apply to every carrier involved.

1874 The Chairman: These initial carriers publish all these rates?

Mr. Norton: Yes.

The Chairman: This case, No. 3000, Arlington Heights Fruit Exchange vs. Southern Pacific Company et al., will be considered as submitted, and the Commission will now adjourn until half-past ten o'clock tomorrow morning.

(Whereupon, at 4:30 o'clock p. m., the Commission adjourned until tomorrow, November 17, 1911, at 10:30 o'clock a. m.)